

KEYWORD: Foreign Preference, Foreign Influence

DIGEST: Applicant was born in the Lebanon Republic (Lebanon) in 1961. He became a United States (U.S.) citizen in 1993, and continues to reside in the U. S. After becoming a U.S. citizen, he continued to maintain his Lebanese citizenship. He voted in a Lebanese national election. His father, mother and five siblings are citizens and residents of Lebanon. Security concerns arising from possible foreign preference and foreign influence are not mitigated. Clearance is denied.

CASENO: 04-12859.h1

DATE: 03/27/2006

DATE: March 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12859

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in the Lebanon Republic (Lebanon) in 1961. He became a United States (U.S.) citizen in 1993, and continues to reside in the U. S. After becoming a U.S. citizen, he continued to maintain his Lebanese citizenship. He voted in a Lebanese national election. His father, mother and five siblings are citizens and residents of Lebanon. Security concerns arising from possible foreign preference and foreign influence are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On September 29, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed 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 Applicant. Specifically, the SOR set forth security concerns arising under Guideline C (Foreign Preference), and Guideline B (Foreign Influence) of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On October 12, 2005, Applicant submitted a notarized response to the allegations. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on December 12, 2005. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response or additional evidence. Fourteen government exhibits marked Items 1 through 14, including the SOR and Applicant's response, are admitted into evidence. This case was assigned to me on February 9, 2006.

FINDINGS OF FACT

Applicant admitted, with explanation, the allegations under Guideline C, subparagraphs 1.a. and 1.b., and Guideline B, subparagraphs, 2.a. through 2.d., of the SOR. ⁽¹⁾ Those admissions are incorporated here as findings of fact. He denied the remaining general allegations. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 44-year-old materials manager for a defense contractor. ⁽²⁾ He has worked for this contractor for three years. ⁽³⁾ He received a Bachelor of Computer Science degree from U.S. university in 1987. ⁽⁴⁾ He completed a security clearance application (SF 86) in December 2002. ⁽⁵⁾

Applicant was born in Lebanon, and has primarily lived in the U.S. since 1985. ⁽⁶⁾ He became a U.S. citizen in 1993, but retains his Lebanese citizenship. ⁽⁷⁾ He does not intend to give up his Lebanese citizenship, as he has close ties with his family there. ⁽⁸⁾ He maintains that his loyalty and allegiance is solely to the U.S. ⁽⁹⁾ He has a U.S. passport, which he uses for international travel. ⁽¹⁰⁾ His Lebanese passport expired in 1998, and he does not intend to renew it. ⁽¹¹⁾ Between 1995 and 1996, after becoming a U.S. citizen, he voted in a Lebanese national election. ⁽¹²⁾ If he is in Lebanon during the time of an election, he might vote again. ⁽¹³⁾

Applicant has been married for 18 years to a U.S.-born citizen. ⁽¹⁴⁾ They have no children. ⁽¹⁵⁾ He has never served in the military forces of any country. ⁽¹⁶⁾ From 1987 to 1990, he worked for the U.S. government in Saudi Arabia. ⁽¹⁷⁾ From 1994 until 1997, he worked in Lebanon for a privately owned company. ⁽¹⁸⁾ He has never worked for a foreign government. ⁽¹⁹⁾

His mother and father were born in Lebanon, and still reside there. ⁽²⁰⁾ He has four brothers and two sisters, who were born in Lebanon. ⁽²¹⁾ All his siblings live in Lebanon, except one brother who lives in the U.S., and is a naturalized U.S. citizen. ⁽²²⁾ His mother-in-law and father-in-law were born in the U.S., and are citizens and residents of the U.S. ⁽²³⁾ He traveled to Lebanon, Saudi Arabia, Kuwait, and the United Arab Emirates on business in November 2002 for 20 days, and to Lebanon for 25 days to visit his family, in December 2003 and January 2004. ⁽²⁴⁾ He does plan to visit his family in Lebanon in the future. ⁽²⁵⁾ Additional contacts with his family members are unknown. He would report any contacts or threats made by persons or businesses of a foreign country to him or his family in Lebanon. ⁽²⁶⁾

Applicant does not own foreign property or have any financial interests in Lebanon or any other foreign country, nor does he have foreign government contacts. ⁽²⁷⁾ His is financially stable. ⁽²⁸⁾ The record does not contain any information about the nature and type of employment of his family members in Lebanon.

Lebanon is a parliamentary republic/democracy in which the people constitutionally have the right to change their government. ⁽³⁰⁾ Traditionally, the U.S. and Lebanon have had, and still do have, close ties. However, Syria strongly influences Lebanon's foreign policy. ⁽³¹⁾ In recent years, the U.S. Department of State has issued travel warnings, urging U.S. citizens to weigh carefully the necessity of traveling to Lebanon because Americans have been the target of terrorists attacks. ⁽³²⁾ Lebanon hosts many U.S. designated terrorist groups. ⁽³³⁾ Because of these problems, U.S. airlines are prohibited from flying into Lebanon. ⁽³⁴⁾ Lebanon also has a poor record on human rights. ⁽³⁵⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. ⁽³⁶⁾ Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁷⁾ The government has the burden of proving controverted facts.⁽³⁸⁾ The burden of proof is something less than a preponderance of the evidence.⁽³⁹⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁴⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁴¹⁾

No one has a right to a security clearance⁽⁴²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁴³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁴⁴⁾ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.⁽⁴⁵⁾ 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Foreign Preference - Guideline C: When an individual acts in such a way as to indicate a preference for a foreign country over the United State, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Foreign Influence - Guideline B: 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 not citizens of the United States or 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.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude

the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline C. Even though Applicant renounced his Lebanese citizenship when he swore allegiance to the U.S. in 1993, under Lebanese law, he retained his Lebanese citizenship. Using his dual citizenship status, he obtained a Lebanese passport. He voted in a national election when he was working in Lebanon in 1995 and 1996. Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1. (*The exercise of dual citizenship*), FP DC E2.A3.1.2.2. (*Possession and/or use of a foreign passport*), and FP DC E2.A3.1.2.2. (*Voting in foreign elections*) apply.

A security concern based on foreign preference can be mitigated in several ways. Although he considers himself a loyal U.S. citizen, Applicant is not willing to renounce his Lebanese citizenship. Rather, because Lebanon is the place of his birth and most of his family continues to live there, he plans to retain his Lebanese citizenship. He indicated that should he be in Lebanon during an election, there is a possibility he would vote in the election. His decision to allow his Lebanese passport to expire and intent not to renew it is a mitigating factor; however, his desire to remain a dual citizen and continue to visit his family in Lebanon weighs against mitigation. He has not established a mitigating condition under the Foreign Preference Mitigating Conditions (FP MC) E2.A3.1.3.1. (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*), and FP MC E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*). After obtaining his U.S. citizenship in 1993, he worked in Lebanon for three years. During this time, he exercised his right as a Lebanese citizen to vote in a national election. Thus, FP MC E2.A3.1.3.3. (*Indications of possible foreign preference...occurred before obtaining United States citizenship*) does not apply. Finally, when he swore allegiance to the U.S. in 1993 upon becoming a citizen, he agreed to renounce his Lebanese citizenship. The U.S. government has not sanctioned his decision to retain his Lebanese citizenship in addition to his U.S. citizenship. FP MC E2.A3.1.3.4. (*Activity is sanctioned by the United States*) also does not apply. Applicant has not mitigated the government's case under Foreign Preference.

The government has established its case under Guideline B. Foreign Influence Disqualifying Condition 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 in this case. Applicant has a father, a mother and five siblings, who are citizens of Lebanon and live there. This "could create the potential for foreign influence that could result in the compromise of classified information."⁽⁴⁶⁾ The mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B.⁽⁴⁷⁾ However, such ties do raise a *prima facie* security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.⁽⁴⁸⁾

To mitigate the government's security concerns under Foreign Influence Mitigating Conditions (FI MC), Applicant bears the burden of demonstrating that his family members in Lebanon are not in a position where they could be exploited by a foreign power in a way that could force him to choose between loyalty to those relatives and the U.S. He has established that his closest family member, his wife, a U.S. citizen by birth, lives with him, thus, negating any vulnerability from pressure or duress being applied to this family member. However, Applicant has not met his burden of establishing that his family members in Lebanon are not vulnerable to pressure or duress by a foreign power. As the record is devoid of any information concerning the identity of his brothers' and sisters' employers in Lebanon and the

nature of the jobs they hold, or whether they are in anyway connected to Lebanon's government, military, or intelligence services, he has not presented sufficient information for me to assess their potential vulnerability to coercion, duress or pressure, and has not met his burden. Thus, FI MC E2.A2.1.3.1. does not apply.

Applicant does not want to renounce his Lebanese citizenship because his family still lives there. He plans to continue visiting his family in Lebanon, as he has done in the past. His expressed desires reflect his strong ties with his family, and cannot be considered casual or infrequent, or the result of official U.S. business. While he has stated that he would contact the proper authorities if he is threatened or contacted by persons or businesses of a foreign country, I have serious concerns about what he would do should members of his family be in danger of serious harm given his strong ties of affection. He has not established mitigating conditions FI MC E2.A2.1.3.2. through FI MC E2.A2.1.3.4. Although he has no financial interests in Lebanon or any other foreign country, his lack of financial interests is insufficient to outweigh his strong desire to remain close to his family in Lebanon. Applicant has not mitigated the government's concerns under foreign influence.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am not persuaded by the evidence in this case that Applicant would not be vulnerable to pressure or duress from a foreign power or the government of Lebanon. Although Applicant has developed a family life in the U.S., he has not provided sufficient information concerning the frequency of his contacts with his parents and siblings in Lebanon. Likewise, his failure to provide information regarding the employment of his parents and siblings, and his strong family ties raises concerns about the possibility of pressure being exerted upon them by a foreign power or entity which could put him at risk. Applicant has not mitigated the government's case under Guideline C and Guideline B. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C (Foreign Preference): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Paragraph 2, Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly not consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Mary E. Henry

Administrative Judge

1. Item 3 (Response to SOR, dated October 12, 2005) at 1.

2. Item 4 (Applicant's security clearance application, dated December 9, 2002) at 1-2.

3. *Id.* at 2.

4. *Id.*

5. *Id.* at 1.

6. *Id.*; Item 5 (Applicant's signed statement, dated February 17, 2004) at 1.

7. Item 5, *supra* note 6, at 1-2; Item 4, *supra* note 2, at 1.

8. Item 5, *supra* note 6, at 2; Item 3, *supra* note 1, at 1.

9. *Id.*

10. Item 5, *supra* note 6, at 1; Item 4, *supra* note 2, at 1.

11. Item 5, *supra* note 6, at 1-2.

12. *Id.* at 3.

13. *Id.*

14. *Id.* at 1; Item 4, *supra* note 2, at 4.

15. *Id.*

16. Item 4, *supra* note 2, at 5.

17. Item 5, *supra* note 6, at 1.

18. Item 4, *supra* note 2, at 6.

19. Item 5, *supra* note 6, at 1.

20. Item 4, *supra* note 2, at 4-5.

21. *Id.* at 5; Item 5, *supra* note 6, at 2.

22. *Id.*

23. Item 4, *supra* note 2, at 6.

24. Item 5, *supra* note 6, at 2.

25. *Id.* at 3.

26. *Id.* at 2.

27. *Id.*

28. Item 4, *supra* note 2, at 9. [\(29\)](#)

29. Item 5, *supra* note 6, at 2; Item 3, *supra* note 1, at 1.

30. Item 6 (U. S Department of State, Background Note: Lebanon, August 2005) at 6.
31. *Id.* at 9-10.
32. Item 7 (Travel Warning, U.S. Department of State, April 21, 2005) at 1.
33. Item 10 (U.S. Department of State, Country Reports on Terrorism 2004, dated April 2005) at 2.
34. Item 7, *supra* note 31, at 1-2.
35. Item 9 (U.S. Department of State, Lebanon, Country Reports on Human Rights Practices - 2004, dated February 28, 2005.).
36. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
37. ISCR Case No. 96-0277 (July 11, 1997) at 2.
38. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
39. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
40. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
41. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
42. *Egan*, 484 U.S. at 531.
43. *Id.*
44. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
45. Executive Order No. 10865 § 7.
46. Directive, ¶E2.A2.1.1.
47. ISCR Case No. 99-0424, 2001 DOHA LEXIS at 33-34 (App. Bd. Feb. 8, 2001).
48. *Id.*