

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is 47 years old, married with two children, and works for a defense contractor using his Ph.D. in mechanical engineering. His parents live in Lebanon and are Lebanese citizens. His wife has dual U.S. and Ecuadoran citizenship. Applicant and his children have dual U.S. and Lebanese citizenship. Applicant retained and used his Lebanese passport for trips to Lebanon in 1997 to 1999, and again in 2003 for his own travel convenience. Applicant did not mitigate the foreign preference and foreign influence security concerns. Clearance is denied.

CASENO: 05-01428.h1

DATE: 01/30/2006

DATE: January 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01428

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 47 years old, married with two children, and works for a defense contractor using his Ph.D. in mechanical engineering. His parents live in Lebanon and are Lebanese citizens. His wife has dual U.S. and Ecuadoran citizenship. Applicant and his children have dual U.S. and Lebanese citizenship. Applicant retained and used his Lebanese passport for trips to Lebanon in 1997 to 1999, and again in 2003 for his own travel convenience. Applicant did not mitigate the foreign preference and foreign influence security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 25, 2005, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on April 20, 2005. Applicant requested his case be decided on the written record in lieu of a hearing.

On June 13, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM on July 25, 2005, within the 30 day time allowed that would have expired on July 28, 2005. The case was assigned to me on September 20, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough

review of the FORM record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 47 years old, married with two children, and has a Ph.D. in mechanical engineering. He works for a defense contractor. He came to the U.S. in 1978 to attend college. On October 5, 1988, Applicant became a naturalized U.S. citizen. He retained his Lebanese citizenship to expedite his traveling to Lebanon to visit his family. He was born there and his parents reside there at present. While attending college, he met and married an Ecuadoran citizen. She became a naturalized U.S. citizen on April 22, 1991. She also retained her original citizenship, that of Ecuador, to make it easier for her to travel there to visit her family. Their two children have dual citizenship with the U.S. where they were born, and with Lebanon, the country of origin of their father. (Items 3-6)

Applicant's parents are Lebanese citizens and live in Lebanon. They hold U.S. resident alien cards resulting from living in the U.S. with Applicant from 1986 to the late 1990s, when they returned to Lebanon. They are both in their 80s and in poor health. Applicant's brother lives in France and is a naturalized French citizen. Applicant calls his parents on the telephone once or twice monthly. (Items 3-6)

Applicant traveled to Lebanon to visit his family annually from 1997 to 1999, and then again in 2003. Each time he traveled there he used his Lebanese passport so he would not have to obtain a visa for his U.S. passport, thereby making his travel easier. His Lebanese passport expired on May 7, 2005. It was originally issued on January 20, 1995, when Applicant already possessed a valid U.S. passport. (Items 3-6)

Lebanon is a parliamentary republic at the eastern end of the Mediterranean Sea. From 1970 to 1995 it was convulsed in a religious and ethnically driven civil war. Syria maintained a military presence in Lebanon until 2005, when it withdrew under international pressure. Terrorists groups operate in Lebanon, primarily against Israel, and the Lebanese government does not suppress them. The U.S. State Department warned U.S. citizens about the hazards of travel into Lebanon, and takes the position that U.N. Resolution 1559 has not been fully implemented by the Lebanese and Syrian governments regarding Syrian withdrawal and Lebanese independence. (Exhibits 7-12)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

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:

Guideline C: Foreign Preference: *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. E2.A3.1.1

Guideline B: Foreign Influence: *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 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. E2.A2.1.1

Applicable also is the Memorandum of August 16, 2000, entitled "Guidance of DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudicative Guidelines", by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), commonly known as the "Money Memo". This memorandum guidance states that

possession and/or use of a foreign passport may be a disqualifying condition. . . The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raised doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States.

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant is a dual U.S. and Lebanese citizen. Also, Applicant possesses a Lebanese passport and has for many years. He used it in preference to his U.S. passport to travel to Lebanon from 1997 to 1999, and in 2003. Applicant found it easier and preferential for him to use his Lebanese passport when traveling to Lebanon because he did not have to obtain a visa on his U.S. passport. Therefore, Disqualifying Conditions (DC) 1 (The exercise of dual citizenship E2.A3.1.2.1) and DC 2 (Possession and/or use of a foreign passport E2.A3.1.2.2) apply.

Mitigating Condition (MC) 1 (Dual citizenship is based solely on parent's citizenship or birth in a foreign country E2.A3.1.3.1) applies, but is not dispositive. The fact is there is no evidence Applicant surrendered the passport, and therefore, DOD is prohibited from granting him a clearance because of the Money emo. He obtained Lebanese citizenship for his two children who were born in the U.S., thereby showing a strong desire on his part to maintain a substantial connection with Lebanon. Applicant failed to meet his burden of proof. Therefore, I conclude the foreign preference guideline against Applicant.

Regarding the foreign influence security concern, DC1 (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. E2.A2.1.2.1) and DC 2 (Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists. E2.1.2.2) apply. Applicant's wife is a dual Ecuadoran and U.S. citizen. His parents are citizens of Lebanon and live there. They also have resident alien status in the U.S., but have not been residents in the U.S. for several years. His brother is a citizen of France. His children are dual U.S. and Lebanese citizens. Applicant traveled regularly to Lebanon from 1997 to 1999 when Syria maintained a substantial military, political and economic presence there, Lebanon was emerging from a lengthy civil war involving ethnic and religious factions, and terrorist groups operated freely.

Applicant has not met his burden of proof that MC 1 (A determination that the immediate family members, (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.A2.1.3.1) applies. He has not shown that his parents are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could make Applicant choose between his loyalty to them or to the U.S. Therefore, that MC does not apply. With the frequency of trips over the past seven years to visit his parents Applicant cannot show his contact with them is casual and infrequent, and by definition in the Appeal Board cases such familial contact does not meet that test, so MC 3 is not applicable. Therefore, I conclude this guideline against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).