

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is 34 years old, married to a Lebanese citizen, and works for a defense contractor. Applicant is a dual U.S. and Lebanese citizen. He has both a U.S. and Lebanese passport. He uses the Lebanese passport repeatedly to travel to visit his parents in preference to his U.S. passport. Applicant's parents live in Lebanon, but he grew up in Nigeria. Applicant has not surrendered his Lebanese passport nor renounced his Lebanese citizenship. Applicant has not mitigated the foreign preference and foreign influence security concerns. Clearance is denied.

CASENO: 05-02185.h1

DATE: 01/30/2006

DATE: January 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02185

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 34 years old, married to a Lebanese citizen, and works for a defense contractor. Applicant is a dual U.S. and Lebanese citizen. He has both a U.S. and Lebanese passport. He uses the Lebanese passport repeatedly to travel to visit his parents in preference to his U.S. passport. Applicant's parents live in Lebanon, but he grew up in Nigeria. Applicant has not surrendered his Lebanese passport nor renounced his Lebanese citizenship. Applicant has not mitigated 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 June 9, 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 July 11, 2005.. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 27, 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 did not file a response to the FORM within the 30 day time allowed that expired on September 9, 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 evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 34 years old, married, and has one child born who was born in the U.S. He works for a defense contractor. His wife is a Lebanese citizen living with the Applicant in the U.S. She has applied for U.S. citizenship and is waiting the results of her 2002 application. Applicant has dual citizenship with Lebanon and the U.S. He was born in Nigeria and grew up there until he moved to the U.S. in 1984 for educational purposes. He became a naturalized U.S. citizen on January 1, 1992. Applicant has a U.S. and a Lebanese passport. The Lebanese passport was originally issued on August 9, 1990, then renewed on August 29, 2001, and it expires on August 28, 2006. Applicant renewed his Lebanese passport in 2001 even though he had U.S. citizenship. Applicant has neither surrendered his passport nor renounced his Lebanese citizenship. He uses his Lebanese passport to travel repeatedly to Lebanon to visit his family, thereby avoiding the need to obtain a visa on his U.S. passport. Applicant traveled annually to Lebanon and Nigeria from 1988 to 1999 to visit his family. Since 2000 he has only traveled to Lebanon biennially for these visits. (Exhibits 3 and 4)

Applicant's family moved from Nigeria to Lebanon for retirement purposes in 2003. His only sister remains living in Nigeria. Applicant's only brother lives in the U.S. All of Applicant's family members are dual U.S. and Lebanese citizens, including his parents. Applicant's wife and her parents are not dual citizens, being only Lebanese citizens. They reside in Lebanon. (Exhibits 3 and 4)

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 6-11)

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 possesses a Lebanese passport and has for many years. He used it in preference to his U.S. passport to travel to Lebanon and Nigeria on an annual basis from 1988 to 2000, and he continues to use it for his biennial visits to Lebanon. From his SOR Answer, Applicant obviously found it easier and preferential for him to use his Lebanese passport when traveling to Lebanon. Therefore, under the foreign preference guideline C, 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.

No Mitigating Conditions (MC) are applicable. Applicant's statement in Exhibit 3 says he spent almost his entire life until 1984 growing up in Nigeria, but does not explain how he has only Lebanese citizenship in addition to his U.S. citizenship. His Lebanese citizenship did not come, therefore, from his birth in Lebanon, if he was in fact born there. Applicant does not state where his parents were born, and he fails to explain how they have both U.S. and Lebanese citizenship if they spent all their lives in Nigeria. Applicant fails to meet his burden of proof that MC 1 (Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1) applies.

Applicant in Exhibit 3 states he told the government investigator that he would renounce his Lebanese citizenship, but then never took any action to effectuate that supposed willingness. MC 4 (Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4) applies. All that is required is an expressed willingness to renounce. However, he failed to mitigate DC 1 and DC 2 because he failed to surrender his Lebanese passport as required by the Money Memo. 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 Lebanese citizen. His parents are dual citizens of Lebanon and the U.S., but prefer to live in Lebanon. His sister lives in Nigeria.

With the political situation in Lebanon, and the marked paucity of information supplied by Applicant in his Answer regarding his parents' location in Lebanon, and his parents' employment before retirement, 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 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 17 years to visit his parents Applicant cannot show his contact with them is casual and infrequent, 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

Subparagraph 2.d: 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).