

DATE: January, 27, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-02878

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Candace L. Le'i, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a native born American. His parents fled Lebanon in 1976 because of that country's civil war. His parents are dual nationals who reside in Lebanon. His father "runs a hospital . . . funded by the Catholic church." His mother is "a homemaker." The Applicant's 17 year old brother is also a dual national. He lives with the Applicant's parents, but will return to the U.S. to attend college when he is emancipated at age 18. The Applicant's sister is a dual national, residing with the Applicant in the U.S. She is a college student. The Applicant's very elderly grandparents are citizens and residents of Lebanon, as are his aunts and uncles, one uncle being a dual national with the U.S. None of the Applicant's foreign relatives are connected with a foreign government or the subject of coercion vis-a-vis the Applicant. Clearance is granted.

STATEMENT OF THE CASE

On August 25, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 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.

Applicant filed an Answer to the SOR on September 15, 2005.

The case was received by the undersigned on October 13, 2005. A notice of hearing was issued on November 7, 2005, and the case was heard on November 21, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called a witness to testify, and also submitted documentary evidence. The transcript (TR) was received on December 12, 2005. The issues raised here are whether the Applicant's perceived Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis for all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 26 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline B - Foreign Influence

The Applicant is a native born American (TR at page 24 lines 17~22, and Government Exhibit (GX) 1 at page 1). His parents fled Lebanon in 1976 because of that country's civil war (*Id*).

1.a.~1.e. The Applicant's parents are dual nationals who reside in Lebanon (TR at page 21 line 20 to page 23 line 22, and at page 25 lines 12~20). His father "runs a hospital . . . funded by the Catholic church" (TR at page 22 lines 13~15). His mother is "a homemaker" (TR at page 22 lines 20~21). The Applicant's 17 year old brother is also a dual national (TR at page 28 line 1 to page 29 line 14. He lives with the Applicant's parents, but will return to the U.S. to attend college when he is emancipated at age 18 (*Id*, and Applicant's Exhibit (AppX) D). The Applicant's sister is a dual national, residing with the Applicant in the U.S. (TR at page 29 line 15 to page 30 line 24). She is a college student (*Id*, and AppX C). The Applicant's very elderly grandparents are citizens and residents of Lebanon (TR at page 20 line 6 to page 21 line 19, and at page 52 line 1 to page 52 line 21). They are in their 80s and 90s (*Id*). The Applicant's three aunts and two uncles are also citizens and residents of Lebanon, one uncle being a dual national with the U.S. (*Ibid*, and TR at page 52 lines 1~21). The Applicant has little contact with his grandparents, aunts and uncles (*Id*). None of the Applicant's foreign relatives are connected with a foreign government (TR at page 52 lines 1~21). The Applicant has traveled to Lebanon in 1999, 2000, 2002, 2003, and most recently in 2005 (TR at page 31 line 1 to page 33 line 12, and at page 52 line 22 to page 53 line 8). He has always used his U.S. passport, and has always reported his foreign travel to his employer (AppXs E, G and H).

Mitigation

Those who supervise or work with the Applicant think most highly of him, and would recommend his to a position of trust (TR at page 55 line 3 to page 61 line 7, and AppX I).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a 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.

The Government must make out a case under Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an 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 disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. 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

The Applicant is a native born American. However, his parent, siblings and one uncle are dual nationals. He also has grandparents, aunts, and uncles who are citizens and residents of Lebanon. The first disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of . . . a foreign country." None of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in Lebanon or the U.S. can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation (TR at page 27 lines 7~17). The first mitigating condition is therefore applicable as "the immediate family members . . . 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 persons involved and the United States." Mitigation is shown. Guideline B is found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

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

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge