



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 06-25441
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

June 3, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant was born in Lebanon, resided there part-time while a minor living with his parents, formerly held a Lebanese passport, and voted there once in a non-government election. In context, these actions did not demonstrate preference for a foreign country over the United States. Based upon thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted his Security Clearance Application (SF 86), on October 18, 2004. On November 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline C. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on December 4, 2007. He answered the SOR in writing (Answer) on January 2, 2008, and again on February 27, 2008, and requested a hearing before an Administrative Judge. DOHA received the request on February 27, 2008. Department Counsel was prepared to proceed on March 11, 2008, and DOHA assigned the case to me on March 13, 2008.

DOHA issued a notice of hearing on March 17, 2008, and I convened the hearing as scheduled on March 27, 2008. On March 12, 2008, Applicant waived his right to 15 days notice via an email to Department Counsel, and confirmed that waiver during the hearing. (Tr. at 11-12.) The government offered exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 4, 2008.

Findings of Fact

Applicant is a 28-year-old employee of a defense contractor. He is married with one young daughter. He was born in Lebanon, and first came to the United States with his parents when he was about four years old. His father was a commercial architect whose work was primarily in Lebanon, but the family came to the United States on permanent resident visas and spent most of each year here to avoid the dangers of the Lebanese civil war. They all became naturalized U.S. citizens in 1994. (Tr. at 41-45.)

Applicant was schooled in both Lebanon and the U.S., receiving his high school diploma from a Lebanese school in June 1998. In September 1998, he moved permanently to the U.S. and began college. He received his bachelor's degree in June 2002, and his master's degree in December 2003, both in electrical engineering. He was hired by his present employer in January 2004, and was granted an interim security clearance, without incident, until it was suspended in connection with the present proceedings. He has subsequently earned an M.B.A. at company expense. (GE 1 at 2; AE A; Tr. at 59.)

During a family visit to Lebanon in 1997, when Applicant was 17 years old, his parents were required by the Lebanese army to obtain a Lebanese passport for him in order to leave that country to return to the United States. Applicant used that passport to leave Lebanon on that occasion, but used only his U.S. passport thereafter. (Tr. at 36-37, 56-58.) The Lebanese passport expired in 2002, and was destroyed in front of his company's security officer on March 30, 2007. (GE 2 at 15, 24.) Applicant admitted the truth of SOR ¶ 1.a, concerning this passport, with this explanation of the circumstances.

Applicant also admitted the facts alleged in SOR ¶ 1.b, concerning his visits to Lebanon, with explanations. As noted above, he lived intermittently in Lebanon and the U.S. while a minor, depending on where his parents were at the time. Shortly before his 18th birthday, he moved to the U.S. full time in order to attend college. He visited Lebanon twice in 2000 to visit his grandmother while she was sick with terminal cancer. He visited again in 2001 to see his mother who was still there in connection with caring

for his grandmother. In 2004, he went to Lebanon to attend the wedding of a friend (who is now a U.S. citizen residing in the U.S.). In 2005 and 2006 he made brief visits to Lebanon during trips that were primarily for his honeymoon and his brother's wedding in Europe. He properly reported his foreign travel to security personnel due to his interim clearance. He testified that he does not desire to return to Lebanon in the future, and has no one left there that he considers family. His father is now retired. Although he has one uncle and a few cousins still living in Lebanon, all of his immediate and close family members are U.S. citizens and residents. (Answer; AE B; GE 2 at 23; Tr. at 28, 30-32, 38-41, 54-55, 58-59.)

While Applicant was in Lebanon in 2005, he was asked to, and did, vote in an election in a church he was attending in his family's former home town. The election was for a church functionary, not a government official, and he was not required to be a Lebanese citizen to cast the vote. He has voted in numerous U.S. elections, and has no intention of ever voting in any future Lebanese election. He did not vote in Lebanon in 1998, and the SOR was amended to delete that portion of the SOR ¶ 1.c allegation at Department Counsel's request. (Answer; GE 3; Tr. at 38, 46-49, 67-68.)

Applicant owns no property and has no financial assets in Lebanon. He and his wife own their home and two (soon to be three) other investment properties in the U.S., purchased with his wife's family's assistance. He estimated his net worth here at \$430,000. He is willing to renounce his Lebanese citizenship, but is not sure how to do so. He has no military service obligation in Lebanon, and never served in their armed forces. (GE 2 at 10; Tr. at 39-40, 50-51, 59-62.) His testimony during the hearing was forthright and credible.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used to evaluate an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." In reaching this decision, I

have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information.

Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9, security concerns involving foreign preference arise because, “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.”

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport;

(2) military service or a willingness to bear arms for a foreign country;

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial. or business interests in another country;
- (6) seeking or holding political office in a foreign country; and,
- (7) voting in a foreign election;
- (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;
- (c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and,
- (d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

AG ¶ 11 provides conditions that could mitigate those security concerns:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
- (d) use of a foreign passport is approved by the cognizant security authority.
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and,
- (f) the vote in a foreign election was encouraged by the United States Government.

Applicant did acquire a Lebanese passport in 1997, after becoming a U.S. citizen in 1994. However, he did so only because the Lebanese army required him to do so in order to leave Lebanon and return to the U.S. with his parents. That passport expired in 2002, and was later destroyed in the presence of his company's security officer. All of his subsequent travel has been done using his U.S. passport. He does not hold any foreign passport, and has not done so since 2002. Applicant attended school in

Lebanon while he was a minor and resided part time in Lebanon with his parents. His residence and all of his education since he turned 18, ten years ago, has been in the United States. His residence in Lebanon was not to meet citizenship requirements, since he was born there. He has not served in a foreign military, and has no obligation to do so. His infrequent subsequent visits to Lebanon have been for family purposes, but no close family remains there. He has no foreign business or financial interests, and never sought or held foreign political office. He did vote once in Lebanon while visiting there, but on balance the evidence shows that was not an act of citizenship. There is no evidence that he ever acted in the interests of any foreign person, group, organization or government, or made any statement or act showing allegiance to a foreign country.

Applicant's former possession of a Lebanese passport, part-time residence and education there as a child, and casual vote while visiting there in 2005 could raise security concerns under §§ 10(a)(1), (3), (7) and 10(b) above. Under the circumstances of this case, his actions would support only the most minimal concerns under those criteria. Balancing against those concerns would be the mitigating effect of AG §§ 11(a), (b), (c), and (e), all of which are firmly established in this record. Once he was old enough to live independent of his parents, he returned to the U.S. and has established his entire life here, with only brief visits to Lebanon. His 2005 vote was not an exercise of his Lebanese citizenship, which he acquired at birth and is willing to renounce. His former passport is both expired and destroyed. Applicant's allegiance is solely to the United States.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG § 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent 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.

Under AG § 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's conduct of potential concern involves minimal, if any, expression of preference for a foreign country. Most of

the alleged concerns occurred when he was a minor and under his parent's direction. The only recent conduct of potential concern involved a casual vote in an unofficial election there in 2005 while he was attending church. This he freely disclosed, but it was not an exercise of citizenship. It is unlikely that he will exercise any rights or privileges of Lebanese citizenship since all but a few remote relatives, and all his business and personal interests, are in the United States. He does not intend to even visit Lebanon again, and has demonstrated compliance with the obligation to report foreign travel.

On balance, Applicant presented sufficient evidence to fully mitigate reliability and trustworthiness security concerns arising from his dual citizenship, old Lebanese passport, time spent in Lebanon, and 2005 vote there. Overall, the record evidence leaves no doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under Guideline C, and his actions do not indicate a preference for a foreign country over the United States.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge