



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**

In the matter of:)	
)	
)	ISCR Case No. 07-05226
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

February 29, 2008

Decision

HEINY, Claude R., Administrative Judge:

After a thorough review of the case file, pleadings, exhibits, and evidence, I conclude Applicant has rebutted or mitigated the government's security concerns under Guideline C, foreign preference, and Guideline B, foreign influence. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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 for SORs issued after September 1, 2006.

Statement of Reasons (SOR) on August 17, 2007, detailing the security concerns under Guideline C, foreign preference, and Guideline B, foreign influence for Applicant.

On August 29, 2007, Applicant answered the SOR, and requested a hearing before an Administrative Judge. On October 2, 2007, I was assigned the case. On October 17, 2007, DOHA issued a notice of hearing for a hearing held on November 15, 2007. The government offered Exhibits (Ex.) 1 through 3, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through B, which were admitted into evidence. On November 27, 2007, DOHA received the transcript (Tr.) of the hearing.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Lebanon and South Korea. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HEX) I–XXVIII. Applicant's counsel argued that the facts administratively noticed must be limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in ¶ 1.a of the SOR. He admitted the factual allegations in ¶¶ 2.a, 2.c, and 2.d of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance. Applicant neither admitted nor denied the allegations in SOR ¶ 2.b, which related to SOR ¶ 1.a, an allegation he denied.

Applicant is a 47-year-old engineer who has worked for a defense contractor for 22 years. He has held a secret clearance for the past 17 years. (Tr. 67) His duty performance is at the highest level. (Tr. 58) The past year, he received a special merit raise for his duty performance. (Tr. 59)

Applicant's mother received her green card 35 to 40 years ago. She came to the U.S. to visit her sister. (Tr. 53) Lebanon was experiencing a civil war and those families who could afford to do so were sending their children overseas for education. Applicant was the youngest child of his family. In 1974, he went to France to attend high school. In June 1979, he came to the U.S. to attend college. In 1982, he received his bachelor's degree and in 1984 his master's degree. (Tr. 74) In 1984, he became a U.S. citizen.

In 1990, he married his wife who is a medical doctor. (Tr. 46) He has two children ages 5 and 14. His wife and children are U.S. citizens. (Tr. 68) Applicant has no foreign

assets. His assets in the U.S. are approximately \$600,000. (Ex.2) His joint income with his wife for 2005 was \$225,000. (Tr. 57)

In 1993, Applicant used his U.S. passport to travel to Lebanon. His first U.S. passport expired in November 2003, which he renewed in December 2003 and which will expire in December 2013. In June and July 2003, Applicant was in Lebanon for two weeks so his children could learn about the country and language. While there, they stayed in a hotel. On this trip, Applicant took his Lebanese passport, which had expired in 1991, for identification purposes. (Tr. 23, 25, Ex. A) For security reasons Applicant used his expired Lebanese passport to enter Lebanon. Individuals using U.S. passports were at a higher risk of disappearing, being kidnapped, or killed. (Tr. 23) Applicant did not need a Lebanese passport to leave Lebanon, a birth certificate was sufficient. (Ex. 2 Attachment E and F, Tr. 23) He used his U.S. passport to leave the country. (Tr. 24) For all travel, except to Lebanon, Applicant used his U.S. passport. (Tr. 22) Applicant surrendered his expired Lebanese passport at the hearing by making it an Applicant's exhibit A.

Applicant has five sisters who are dual citizens of Lebanon and the U.S. His sisters have all lived in the U.S., each living here long enough to meet the five-year requirement for citizenship. (Tr. 54) He has a brother living in the U.S. who became a U.S. citizen in 2001 (Tr. 48) He has another brother living in the U.S. (Ex 1, Tr. 49) He has contact with his sisters two or three times a year by telephone and every three years or so when they visit him in the U.S. (Ex. 3) The summer of 2007, was the last time he saw any of his sisters. (Tr. 45) Of his nephews and nieces, 90 percent of them live in the U.S., but their mothers chose to stay in Lebanon. (Tr. 44-45) Three of his nephews live in the U.S. doing their medical residencies. One for general surgery, one for internal medicine, and one is an orthodontist. (Tr. 46) His sisters are nearing retirement age and after retirement may move to the U.S. or stay in Lebanon.

Applicant's one sister is a high school sports instructor and divorced. (Tr. 50) Another sister is a registered nurse and a widow. (Tr. 50) Another sister is a high school literature teacher married to a retired lawyer. (Tr. 51) They have three children living in the U.S. Another sister is a history teacher married to another teacher. (Tr. 51) They have two children living in the U.S. Another sister is a bank director married to a mechanical engineer. They have two daughters living in the U.S. None of his relatives or their spouses are currently employed by a foreign government or are involved in politics. (Tr. 52, 81)

In November 2001, Applicant was assigned by his company to work in Korea providing technical support. (Ex. B) He lived in Korea for three and a half years. (Ex. 2) His first assignment to Korea was for a year and a half. The second was for two years. (Tr. 33) While there he met and became friends with an individual who owned a jet ski. (Ex. B) When Applicant returned to the U.S., his friend would periodically – three or four times a year (Tr. 37) – ask Applicant if he could find parts, new or used, for the jet ski. Applicant would check with local stores or his Korean friend would go onto eBay and purchase parts. The eBay purchases would be sent to Applicant in the U.S. who would then ship them to Korea. (Ex. B, Tr. 35) Applicant's Korean friend would pay Applicant

the cost of the goods and shipping fees or, in the case of eBay purchases, would pay the sellers directly. (Ex 2) Applicant received no profit from the transactions. (Tr. 78)

In December 2006, Applicant put his friend in touch with a jet ski dealership in California. Since that time, his friend purchases all of his jet ski equipment needs through the dealership. (Tr. 43) Since then, Applicant has not purchased or sent goods to Korea.

Applicant's Korean friend wire transferred Applicant \$5,365 to purchase a jet ski, however the jet ski was in poor condition, and Applicant returned the money. (Tr. 42) In July 2004, Applicant visited his friend in Korea for approximately one week. Applicant was in Korea pursuant to his duties with his company. (Tr. 72) He spent another week in September 2006 visiting his friend in Korea.

In the early 1990s, Applicant was approached by a Lebanese individual and asked about aircraft blueprints. (Tr. 60) The following day, Applicant went to the company security office to notify them about being approached and the FBI was contacted.

I take administrative notice of the following facts. Lebanon is a nominal democracy with a less-than-perfect human rights record. It has both a long history of civil war and of foreign influence by Syria. Lebanon is not a state sponsor of terrorism, but is a permissive environment for groups recognized by the U.S. as terrorist organizations, which Lebanon considers "freedom fighters" against Israel. The U.S. State Department continues to maintain a travel warning for U.S. citizens contemplating travel to Lebanon. Lebanon is not known to be a collector of intelligence or economic information against the U.S.

The Republic of Korea (ROK) is a stable, mature, democratic republic, a strong military ally and friend of the U.S., and a major U.S. trading partner. (U.S. Dept. of State, *Background Note: South Korea* at 3 (Apr. 2006), incorporated in the record as Hearing Exhibit (HEX) XIII; speech of U.S. Ambassador to the ROK, March, 2006, incorporated as HEX XVI.) The U.S. and the ROK have differed on various issues, some involving the Democratic People's Republic of Korea (North Korea). (Congressional Research Service, *Korea: U.S.-Korean Relations—Issues for Congress* at CRS 10 (June 2005), incorporated in the record as HX XVII.) The U.S. policy is that the question of peace and security on the Korean Peninsula is a matter for the Korean people to decide. The U.S. and the ROK cooperate in trade, academic and cultural exchanges, science and technology, joint efforts to combat terrorism, and people-to-people exchanges. The ROK has a good human rights record, although it has taken some strong measures against violent labor, political, and student demonstrations. North Korean agents have sought to exploit ROK dissidents to undermine the ROK government. Crime is generally low in the ROK.

The U.S., because of its supremacy in industrial power, remains a prime target of foreign economic collection and industrial espionage. Due to the race to control scarce

resources and the global markets, economic intelligence against the U.S., including the theft of trade secrets and competitive business information is likely to increase. Traditional allies as well as adversaries have increased their collection efforts against U.S. targets and will continue to do in the future.

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 useful in evaluating 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(c), the entire process is a conscientious scrutiny 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 "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters 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.

Section 7 of Executive Order 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Preference

Foreign Preference is a security 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. AG ¶ 9. Additionally, the possession or use of a foreign passport is a condition that could raise a security concern and may be disqualifying. AG ¶ 10(a) (1) Applicant did have an expired Lebanese passport, which he used for identification when entering Lebanon. I find AG 10(a) applies.

Applicant used his expired Lebanese passport as a form of identification and not as a passport to enter Lebanon. The Lebanese passport had been expired for 12 years when used for identification. He has a birth certificate which provides identification and no longer needs his expired Lebanese passport. Applicant no longer has possession of the expired passport having chose to make it an exhibit and part of the permanent record.

AG ¶ 11(e) sets forth conditions that could mitigate security concerns if the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated. First, the passport was not “valid.” It had been expired for 12 years. Second, the passport was surrendered and made an exhibit at the hearing. This does not fit the exact wording of 11 (e) because the passport may not have been surrendered to a “cognizant security authority,” but it is beyond Applicant’s control to the same extent as if one of the named events had occurred. Applicant does not have control of the passport and can not get control.

Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. AG ¶ 6

I have considered all of the Foreign Influence disqualifying conditions. Conditions that could raise a security concern and may be disqualifying are listed under AG ¶ 7. AG ¶ 7(a) contact with a foreign family member, business or professional associate,

friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion and AG ¶ 7(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information, apply.

In 1979, Applicant moved to the U.S. He obtained bachelor's degree in 1982 and his master degree in 1984. In 1984, more than 23 years ago, he became a U.S. citizen. His wife, a doctor, and two children are U.S. citizens. In 2005, Applicant's joint income with his wife was \$225,000. He has no foreign assets and his U.S. assets are approximately \$600,000. Applicant has significant ties to the U.S. and few ties to Lebanon and none to South Korea. He has no financial or business interests in Lebanon or South Korea.

Applicant's five sisters reside in Lebanon. He has contact with his sisters two or three times a year by telephone and every three years or so when they visit him in the U.S. The summer of 2007 was the last time he saw any of his sisters. None of his sisters or their spouses have connections with any foreign government. While danger certainly exists for all who reside in Lebanon, Applicant and his sisters are in no greater danger than any other individual living and working there.

Applicant stated he was loyal to the U.S. and would do nothing to compromise U.S. interests. Generally, an Applicant's statements, by themselves, as to what he would do in the face of threats by a foreign government or entity are entitled to little weight. However, Applicant's proven record of action is very important. When asked to supply blueprints, Applicant immediately contacted his security office and the FBI. Should pressure be brought to bear against his sisters in Lebanon, Applicant's reaction will most likely be the same: to immediately inform his security office. His sense of loyalty is exclusively to the U.S.

¶ 8(a) "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S." and ¶ 8(b) "there is no conflict of interest, either because the individual's sense of loyalty or obligations to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest," apply to Applicant's sisters.

When working in South Korea, Applicant became friends with a South Korean citizen. When Applicant returned to the U.S., Applicant assisted his friend on a few occasions to get parts for his friend's jet ski. Sometimes parts were purchased on eBay and sent to Applicant who would send them to South Korea. Sometimes Applicant's friend made direct payment to the seller and other times Applicant would pay and be reimbursed for the cost.

Since December 2006, Applicant has not purchased or sent goods to Korea. Applicant's friend now purchases equipment through a jet ski dealership in California. Applicant's actions were favors to a friend and were not a business. Applicant traveled to South Korea on company business and once for a one week vacation.

As to Applicant's South Korean friend, both ¶ 8(a) and ¶ 8(b) apply as does ¶ 8(c) "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation." There is nothing in Applicant getting parts for his friend's jet ski that rises to a security concern.

There is little likelihood Applicant has any conflict of interest, but if he did it is clear, due to his longstanding loyalty to the U.S. and the likely minimal nature of the conflict; he would resolve it in favor of the U.S.

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 commonsense 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 was born in Lebanon. In 1974, he was sent to Europe for school at age 14. Five years later he moved to the U.S. to attend college. In 1984, at age 24, he became a U.S. citizen, and his wife and immediate family are now here. He is an established, highly regarded engineer, with considerable U.S. ties and assets.

I considered the totality of Applicant's family ties to Lebanon and the heavy burden an Applicant carries when he has family members in a foreign country. His sister's jobs and that of their spouses are not connected to any foreign government. Most of his sister's children live in the U.S. These facts minimize any potential for pressure, coercion, exploitation, or duress. Applicant was sincere, open, and honest at the hearing. In the unlikely event that his sister's were subjected to coercion or duress from terrorist groups, I find that with Applicant's deep and longstanding relationships and loyalties to the U.S., including his uncompromising commitment to his country, wife,

and children, Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the U.S.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign preference and foreign influence security concerns.

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

Paragraph 2, Guideline B: FOR APPLICANT

 Subparagraph 2.a: For Applicant

 Subparagraph 2.b: For Applicant

 Subparagraph 2.c: For Applicant

 Subparagraph 2.d: For Applicant

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

CLAUDE R. HEINY II
Administrative Judge