



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



In the matter of:)
)
-----) ISCR Case No. 08-02715
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: Robert R. Bohn, Attorney At Law

November 24, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on January 25, 2007. On November 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B for Applicant. 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 for SORs issued after September 1, 2006.

The Applicant responded to the SOR on February 23, 2009, and she requested a hearing before a DOHA Administrative Judge. This case was originally assigned to another Administrative Judge on May 15, 2009. It was transferred to the undersigned on June 9, 2009. A notice of hearing was issued on June 16, 2009, scheduling the hearing for July 14, 2009. At the hearing the Government presented two exhibits, referred to as Government Exhibits 1 and 2. The Applicant presented eighteen exhibits,

referred to as Applicant's Exhibits A through R, and testified on his own behalf. The record remained open until close of business on July 21, 2009, to allow the Applicant the opportunity to substitute signed documents in lieu of the unsigned documents that were admitted into evidence as Applicant's Exhibits B, C and D. The Applicant submitted said documents. The official transcript (Tr.) was received on July 23, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political condition in Lebanon. The Applicant and her counsel had no objection. (Tr. p. 14). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 25 years of age and has a Master's Degree in Engineering Management, and a Master's Degree in Logistics and Supply Chain Management. She is employed as a Systems Engineer for a defense contractor. She seeks a security clearance in connection with her employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in the United States in 1984, and is a United States citizen. Her father, who is of Lebanese decent, is a Lebanese citizen by virtue of his birth, and thus, the Applicant is also a Lebanese citizen. The Applicant considers herself only an American. (Tr. p. 57). Shortly after her birth, her family moved to Lebanon where she grew up a Christian speaking English, Arabic, and a little French at home. In 2005, she moved back to the United States to attend college, where she obtained two Master's degrees and excelled academically. (Applicant's Exhibits E and F). Since then, she has made the United States her permanent home. In 2006, she began working for the defense industry.

Her father, a 62 year old citizen of Lebanon, after thirty years, retired in 1997, as a General in the Lebanese Army. He currently receives a military pension of \$2,000 monthly from the Lebanese government and owns two small houses in Lebanon. Applicant stated that if he died, she would not take any inheritance from her father. She does not want it to become a security concern. (Tr. p. 87-88). On a monthly to annual basis, her father has lunch with other retired generals. One of them is an important

person in Lebanon. (Tr. p. 92). Her father has no other contact with any other military or government officials of Lebanon.

Applicant's father has had a United States green card for about ten years and is trying to become a United States citizen. (Tr. p. 63). He is currently visiting the Applicant in the United States, and staying with her. When he is not visiting in the United States, the Applicant telephones her father about once every other week or so. (Tr. p. 67). Applicant's father is aware of the fact that the Applicant is undergoing a security clearance investigation. (Tr. p. 112). Applicant states that she understands her responsibilities to the DoD, while holding a security clearance, and her relationship with her father will never jeopardize it.

The Applicant's 34 year old brother was born in Lebanon, and is a dual citizen of Lebanon and the United States. In 2009, he became a naturalized United States citizen and moved to the United States. He resides in the United States with the Applicant's mother. The Applicant communicates with him about once a month or so. (Tr. p. 68).

The Applicant's 31 year old sister is also a citizen of Lebanon. She has had a United States green card for about ten years and is trying to become a United States citizen. (Tr. p. 70). Her sister resides in the United States and is currently unemployed. Applicant sees her about twice a week.

The Applicant's mother and her maternal grandmother are United States citizens and reside in the United States. Since 2002, Applicant's mother has been living in the United States and works as a teacher.

Applicant testified that she has family on her father's side, including uncles, aunts, grandmother, cousins, nephews and nieces, in Lebanon. Her only communication with them is when she visits there. Only the Applicant's parents know that she has applied for a security clearance, but they do not know any of the details.

Paragraph 2 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has acted in such a way as to show a preference for another country over the United States.

The Applicant had an identification card, issued by Lebanon in February 2000, when she was sixteen years old. (Applicant's Exhibit O). She has never held a Lebanese passport and does not want one. She testified that since moving to the United States, she has traveled to Lebanon every year for Christmas. (Tr. p. 104). During these trips, she used her United States passport (Applicant's Exhibit N), and her Lebanese identification card.

When the Applicant learned that her Lebanese identification card was raising some security concerns, on July 13, 2009, she destroyed it in front of the company's in-house counsel. A declaration from counsel confirms this. (Applicant's Exhibit R). The Applicant has no intentions of renewing it. (Tr. p. 73). Applicant also has a Lebanese

drivers license that she got when she was eighteen that she does not use. (Tr. p. 118). She is willing to renounce her Lebanese citizenship. (Tr. p. 81).

The Applicant testified that she has always complied with security policy and procedure of her company, and has gone above and beyond its requirements. She stated that before any of her travel to Lebanon in the past, she consulted with her company security department. She told them specifically where she was going, who she would be in contact with, as well as her intent and duration of the trip. (Applicant's Exhibit L). Since it has raised a security concern, she will no longer travel to Lebanon. (Tr. p. 86).

The Applicant has not yet voted in an American election, primarily because she has been in school. She plans to vote in the future. She voted once in a Lebanese election in 2002 or 2003 during a visit to Lebanon. Other than that, she has never exercised any rights, privileges, or obligation or duties associated with her Lebanese citizenship. She has no financial holdings of any sort in Lebanon. None of her college education was paid for by the Lebanese government. She has a checking account and a 401(k) retirement account in the United States. (Applicant's Exhibits P and Q).

The Applicant stated that if there were a conflict between the United States and Lebanon, she would, without question, place her loyalty with the United States. If someone contacted her and threatened to harm her family if she did not provide details of her job or sensitive information about the United States, she will not cooperate under any circumstances. (Tr. p. 93 - 94). She would immediately report this activity to her security department. She has no intentions of ever returning to Lebanon.

Applicant's performance evaluations for 2006, 2007, and 2008 reflect either that she "exceeds expectations" or "far exceeds expectations" in every category. (Applicant's Exhibits A, B, and C).

Letters of recommendation from Applicant's direct manager, and various professional associates and coworkers, attest to the Applicant's hard working nature and reliability. She is considered to be an excellent employee. She is driven, dedicated and committed to her work. She is said to be very conscientious and cognizant of security related procedures and policies, and always complies with rules and regulations. She is intelligent and demonstrates great leadership qualities. She has technical, management and communication skills. She is open, honest and trustworthy. (Applicant's Exhibits G, H, I, and J). Applicant has received various certificates and awards for her service with her employer. (Applicant's Exhibit M).

The Applicant has contacts with Lebanon. Accordingly, it is appropriate to discuss the relationship between Lebanon and the United States at this time. I take administrative notice of the following adjudicative facts about Lebanon. Lebanon is a parliamentary republic that became independent in November 1943. The U.S. policy is to maintain its traditional close ties with Lebanon and to help preserve its independence, sovereignty, national unity, and territorial integrity. Since its independence, Lebanon's national policy has been determined by a small group of regional and sectarian leaders.

Political institutions often play a secondary role to religion and personality-based politics. Lebanon has been in a state of war with Israel since 1973. Civil war broke out in April 1975, and did not end until 1991. Since 1992, Lebanon has experienced social and political instability, economic uncertainty, lack of infrastructure, violent clashes with Israeli forces and political assassinations.

I also take administrative notice that Lebanon's foreign policy and internal policies are heavily influenced by Syria, which maintains intelligence agents in Lebanon and is a state sponsor of terrorism. The unstable political situation in Lebanon enables foreign terrorist organizations to operate within its borders. Hezbollah is the most prominent terrorist group in Lebanon, and it has been designed by the U.S. Department of State as a "Foreign Terrorist Organization." The Lebanese government recognizes Hezbollah as a legitimate resistance group and political party. Hezbollah maintains offices in Beirut and elsewhere in Lebanon, is closely allied with Iran, supports a variety of violent anti-Western groups, and has been involved in numerous anti-U.S. terrorist attacks. Hezbollah seeks to obtain U.S. technology, has been involved in several efforts to obtain restricted, dual-use technology, and is considered by the U.S. to be the most technically capable terrorist groups in the world. A center for Hezbollah and Syrian activity is in the Bekaa Valley.

Finally, I take administrative notice that Lebanon has a poor human rights record and has been ineffective in controlling terrorism and political violence. Lebanese security forces have engaged in arbitrary arrest, murder, torture, and other abuses. There is an atmosphere of governmental corruption and lack of transparency. Militias and non-Lebanese forces operating outside the area of Lebanese central government authority have used informers and monitored telephones to obtain information about their perceived adversaries. Ongoing political violence and terrorism directed at Americans and U.S. interests make Lebanon dangerous for U.S. citizens.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern, which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* 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.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

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.;

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.

Foreign Preference

9. *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.

Condition that could raise a security concern:

10. (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.

Conditions that could mitigate security concerns:

11. (a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;

11. (b) the individual has expressed a willingness to renounce dual citizenship;

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress, and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . 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."

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

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign identification card raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Condition 7.(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion applies. Mitigating Conditions 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.(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 applies.

It is noted that the current political situation in Lebanon elevates the cause for concern in this case. The evidence shows that the Applicant, a native born United States citizen, has various family members, including a father, who is a citizen and resident of Lebanon. Although she maintains contact with her father in Lebanon, the nature of the contact does not pose a security risk. Admittedly, her father, who is a retired General in the Lebanese Army, has periodic lunches with other retired generals, one of is an important person in Lebanon. However, these visits are casual and social

and nothing more. On her own volition, the Applicant offered evidence of her father's luncheon associate, who was at one time a retired general. The Government did not have this evidence, nor did the Applicant seek to hide it when she knew it could be jeopardizing her chances of obtaining a security clearance.

The Applicant has been honest, credible, and forthright, and fully understands her responsibilities to the United States while holding a security clearance. She does not discuss her work with her family or anyone else in Lebanon, and most do not know that she works for a defense contractor. She is conscientious and meticulous about how she reports her foreign contacts and understands the importance of doing so. In addition, her father is trying to become a United States citizen and desires to move to the United States. Under the particular facts of this case, the possibility of foreign influence does not exist, nor could it create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

Under Foreign Preference, Disqualifying Condition 10(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* applies. However, Mitigation Conditions 11(a) *dual citizenship is based solely on parent's citizenship or birth in a foreign country*, and 11(b) *the individual has expressed a willingness to renounce dual citizenship* apply.

Although the Applicant is by birth, a dual citizen of Lebanon and the United States, she considers herself to be only an American. She destroyed her Lebanese identification card and is willing to formally renounced her Lebanese citizenship. Except for her father, who is waiting to become a naturalized United States citizen, she has essentially cut all ties to the country of Lebanon. Under the circumstances of this case, I find for the Applicant under Guideline C (Foreign Preference).

Considering all the evidence, the Applicant has met the mitigating conditions of Guidelines B and C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subpara. 1.a.: For the Applicant
Subpara. 1.b.: For the Applicant

Subpara. 1.c.: For the Applicant
Subpara. 1.d.: For the Applicant
Subpara. 1.e.: For the Applicant

Paragraph 2: For the Applicant.
Subpara. 2.a.: For the Applicant
Subpara. 2.b.: For the Applicant

DECISION

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

Darlene Lokey Anderson
Administrative Judge