

DATE: April 7, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04615

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 21, 2004, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns raised under Guideline C (Foreign Preference) and Guideline E (Personal Conduct), of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 28, 2005, after the hearing, Administrative Judge John Grattan Metz, Jr. denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: (a) whether the Administrative Judge erred in concluding that Applicant violated the travel ban in traveling to Lebanon; (b) whether government representatives erred by not providing Applicant fully comprehensive instructions on renouncing his Lebanese citizenship or not making him fully aware that it was Applicant's responsibility to fully understand the process; (c) whether the Administrative Judge erred in concluding that Applicant made inconsistent statements about renouncing his Lebanese citizenship.

The dispositive findings of fact by the Administrative Judge that are relevant to this appeal are as follows:

Applicant was born in Egypt in 1955, deriving Lebanese citizenship from his parents, who later moved back to Lebanon. He immigrated to the U.S. in 1973 to pursue his education and escape the escalating violence in Lebanon. He became a naturalized U.S. citizen in February 1984. He obtained his first U.S. passport in 1984 and renewed it in 1994. He considers himself a U.S. citizen and pledges allegiance to the U.S.

In 1993, Applicant had his expired Lebanese passport re-validated at the Lebanese Embassy in order to travel to Lebanon, in violation of the travel ban imposed by the U.S. Department of State in 1987. When Applicant arrived in Lebanon, Lebanese officials advised him that his passport had not been properly re-validated by the embassy and he was issued a new passport. Applicant was not sure of the expiration date of the new passport, but provided documentation that suggests that it was valid for either one or five years. In his November 2002 sworn statement, he stated that it might be valid until 2003. He also stated that he did not intend to renew the passport and would be willing to surrender it, except that his ex-wife has had it in her possession since February 2001. The travel ban to Lebanon was lifted in 1994, replaced by a travel advisory that continues in effect.

Applicant has stated a willingness to renounce his Lebanese citizenship, but has experienced difficulty doing so because he is unable to produce his Lebanese passport as proof of his Lebanese citizenship. Relying on advice given to him by a DOHA security specialist, he sent an 8 June 2004 letter to the Embassy of Lebanon "renouncing [his] Lebanese citizenship for the purpose of employment on projects for the U.S. government." Although he insisted he was not trying to renounce his Lebanese citizenship solely to obtain his clearance, he made conflicting statements on that.

The Administrative Judge made favorable formal findings for Applicant with respect to Guideline E and paragraph 1.c of Guideline C, and those portions of the SOR are not at issue on appeal. The Judge made unfavorable formal findings on paragraphs 1.a and 1.b of Guideline C: Applicant applied for a renewal of his expired Lebanese passport in 1993 even though he had been naturalized as a U.S. citizen in 1984 (SOR ¶ 1.a) and he used that passport, which expired in 2003, to enter and exit Lebanon during the period (1982 through the mid 1990's) in which the United States had imposed travel ban on U.S. citizens traveling to Lebanon (SOR ¶ 1.b).

Applicant argues that he did not violate the ban on travel by U.S. citizens to Lebanon because he used his Lebanese passport as "another legal path" that was in agreement with U.S. regulations. Applicant cites Senate Concurrent Resolution 74 (August 23, 1994) (Applicant's Exhibit C) for support. ⁽¹⁾ Applicant also specifically objects to language in the Decision that Applicant used his Lebanese passport "to deliberately skirt travel limitations on U.S. citizens." Even if we assume, solely for purposes of this appeal, that Applicant did not directly violate the travel ban because he used his Lebanese passport while entering and exiting Lebanon during the period when travel in Lebanon using a U.S. passport was banned, this does not help Applicant's situation with respect to his security clearance eligibility. The issue is not whether Applicant traveled to Lebanon under an exception in the State Department's regulations that may have legally permitted him to "skirt" a travel ban violation, but whether Applicant's possession and travel to Lebanon on a Lebanese passport is a security issue. Applicant's decision to use the Lebanese passport does not mitigate the security concerns raised by his exercise of the rights and privileges of Lebanese citizenship. *See, e.g.*, ISCR Case No. 01-24306 at 4-5 (App. Bd. Sep. 30, 2003). Under these circumstances, the Administrative Judge could reasonably conclude that Applicant's conduct was disqualifying under Foreign Preference Disqualifying Conditions 1 ⁽²⁾ and 2 ⁽³⁾.

Applicant contends that he followed the instructions he received from named government personnel with regard to his renunciation of Lebanese citizenship and the disposition of his Lebanese passport, and suggests that he should not be held responsible if he failed to do so correctly. He testified that he verbally provided to DOHA the language he used in his June 8, 2004, letter ⁽⁴⁾ to the Embassy of Lebanon's Consular Affairs Office, and that DOHA employees told him that the wording was fine. *See* Hearing Transcript at 76. The Administrative Judge credited him with having mitigated security concerns under Foreign Preference Mitigating Condition 4; ⁽⁵⁾ however, the Judge concluded that none of the other mitigating conditions apply. The Judge also properly concluded that the August 16, 2000, Memorandum of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence) [hereafter referenced as the ASDC3I Memo], applies to Guideline C when the possession and/or use of a foreign passport is involved, and the policy of the Department of Defense requires that a security clearance be denied or revoked unless an applicant "surrenders the foreign passport or obtains official approval for its use from the appropriate agency." There is no mitigating factor for applicant's personal convenience, safety, requirements of foreign law, or the identity of the country. In this case, Applicant makes no claim of official approval and his June 8, 2004, letter does not constitute a surrender of the passport. *See, e.g.*, ISCR Case No. 01-24306 at 5 (App. Bd. Sep. 30, 2003).

In the absence of clear evidence to the contrary, which Applicant did not present, we must assume that the government personnel carried out their duties in good faith and did not endorse Applicant's June 8, 2004, letter as the equivalent of the surrender of his Lebanese passport. *See National Archives and Record Administration v. Favish*, 541 U.S. 157, 174 (2004). Furthermore, even if government personnel had made incorrect representations to Applicant, the actions or inactions of a government employee are not probative of an applicant's judgment, reliability, or trustworthiness, or otherwise indicative of an applicant's security eligibility. An applicant is not entitled to a favorable security clearance decision based on a claim of equitable estoppel that would trump national security policy. *See, e.g.*, ISCR Case No. 02-05854 at 3-4 (App. Bd. Apr. 15, 2004); ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003); ISCR Case No. 99-0481 at 5 (App. Bd. Nov. 29, 2000).

Applicant insists that he clearly and unconditionally renounced his Lebanese citizenship and denies that his statements

were conflicting as indicated in the Administrative Judge's decision. Decision at 3. However, this issue is moot because, as indicated earlier in this Decision, the Judge concluded that Foreign Preference Mitigating Condition 4 applied. Overall, in addition to Applicant's violation of the ASDC3I Memo, the Judge concluded that security concerns could not be mitigated because: (1) Applicant actively exercised his Lebanese citizenship after he was naturalized as an American citizen; (2) all indicators of possible foreign preference occurred after he became a U.S. citizen; and (3) such activity (i.e., traveling to Lebanon on a Lebanese passport when the United States prohibited travel to Lebanon on a U.S. passport) was not sanctioned by the United States. The Judge's conclusions that Foreign Preference Mitigating Conditions 1, ~~(6)~~ 2, ~~(7)~~ and 3 ~~(8)~~ did not apply, and that security concerns stemming from Applicant's overall conduct could not be mitigated, are sustainable.

Order

In the absence of harmful error, the decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

1. Applicant particularly refers to the language in the Resolution stating that "more than 40,000 U.S. citizens traveled safely to Lebanon in 1993 either in defiance of the ban or under current U.S. regulations which permit the use of passports by dual Lebanese-U.S. nationals and in urgent humanitarian cases."

2. "The exercise of dual citizenship" (Directive ¶ E2.A3.1.2.1).

3. "Possession and/or use of a foreign passport" (Directive ¶ E2.A3.1.2.2).

4. A copy of this letter is found on page 6 of Government Exhibit 3, and states, among other things, that "I [sic] renouncing my Lebanese citizenship for purposes of employment on projects for the U.S. Government" and that "I no longer have my Lebanese passport or any other Lebanese documents in my possession."

5. "Individual has expressed a willingness to renounce dual citizenship" (Directive ¶ E2.A3.1.3.4).

6. "Dual citizenship is based solely on parents' citizenship or birth in a foreign country" (Directive ¶ E2.A3.1.3.1).

7. "Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship" (Directive ¶ E2.A3.1.3.2).

8. "Activity is sanctioned by the United States" (Directive ¶ E2.A3.1.3.3).