

DATE: November 6, 2007

In re:)	
)	
-----)	ISCR Case No. 07-00219
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 47 year-old naturalized United States citizen, who was born in Lebanon in 1960 and moved to the U.S. in 1980. His wife, daughter, two brothers and one sister are all United States citizens and residents. Applicant’s mother and parents-in-law are citizens and residents of Lebanon. None of these family members belong to, participate in, or are active with any government agency of Lebanon. They do not constitute an unacceptable security risk, because Applicant has such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interest in favor of the U.S. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On April 4, 2007, 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 Applicant which detailed 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on May 29, 2007. Applicant requested a clearance decision based on a hearing record.

The case was assigned to this Administrative Judge to conduct a hearing and issue a written decision on July 23, 2007. A Notice of Hearing was issued to the parties on October 4, 2007, and the hearing was held on October 18, 2007, in San Jose, California..

At the hearing, Department Counsel offered two documentary exhibits (Exhibits 1 and 2) and no witnesses were called. Applicant offered 27 documentary exhibits (Exhibits A - AA) and offered his own testimony. The record was left open until October 26, 2007, to allow Applicant to offer additional documentation regarding individual of Lebanese heritage. Applicant offered additional documentation in a timely manner, which has been identified collectively as Exhibit BB. Department Counsel offered no objection. I have entered Exhibit BB for Applicant. The transcript (Tr) was received on October 26, 2007.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B and Guideline C of the Directive. The SOR contains six allegations, 1.a. through 1.f., under Guideline B, and two allegations, 2.a. and 2.b., under Guideline C. Applicant admitted SOR allegations 1.a., 1.b., 1.d., 1.e., and 1.f., and he denied 1.c., 2.a., and 2.b. The admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 47 years old, married and has one 2 ½ year old daughter. He received a Bachelor of Science degree in Physics in 1981, a second Bachelor of Science degree in Electrical Engineering in 1982, and a Master's Degree in Electrical Engineering in 1986, all from United States universities. Applicant is employed as an Electrical Engineer by a defense contractor, and he seeks a security clearance for that position.

Applicant was born in Lebanon in 1960, and he moved to the United States in 1980 at the age of 20. He became a United States citizen in 1996.

Applicant's wife is a Lebanese born United States citizen. Their daughter is a natural born United States citizen.

Applicant has two brothers and one sister, who were all born in Lebanon, but are now United States residents and citizens.

Paragraph 1 (Guideline B - Foreign Influence)

1.a. Applicant's mother is a citizen and resident of Lebanon. She is 73 and a homemaker. Applicant has weekly contact with her by telephone. His mother has visited the U.S. many times, but she has no plan to move here permanently. She has never worked for the government of Lebanon, nor does she receive a pension from the Lebanese government.

1.b. Applicant's father-in-law and mother-in-law are citizens and residents of Lebanon. His father-in-law is 76 years old, and he is a retired meteorologist for the airport authority in Lebanon. Applicant's mother-in-law is 60, and she never worked outside the home.

1.c. The SOR alleges that Applicant's sister resides in Qatar. At the hearing, Applicant testified that his sister did live in Qatar for approximately one year, while she was employed by a subsidiary of a U.S. Company. She no longer works for that company. His sister now resides in the United States, and she is a United States citizen. She has no plans to reside in Qatar in the future.

1.d. Applicant's brother-in-law is a citizen of Lebanon. While it was alleged in the SOR that he was also a resident of Lebanon, Applicant testified that his brother-in-law works as a quality assurance representative for a private company in Saudi Arabia, where he lives.

1.e. Applicant has another brother-in-law, who is a citizen of Lebanon. He lives in Kuwait, where he works for a Kuwaiti bank.

1.f. Applicant traveled to Lebanon in the years 2005, 2002, 2001, 1999, and 1998. All of these trips were to visit his parents, or on one occasion when he attended his father's funeral.

Paragraph 2 (Guideline C - Foreign Preference)

2.a. It is alleged in the SOR that Applicant exercised dual citizenship with Lebanon and the United States. Applicant contends that he has not engaged in any of the responsibilities or duties of being a Lebanese citizen, such as voting in elections of Lebanon, or paying taxes to the government of Lebanon. The only potential exercise of Lebanese citizenship is the use of his Lebanese passport, after he became a United States citizen, which is alleged in the SOR as 2.b., and which will be reviewed below.

2.b. It is also alleged in the SOR that Applicant used his Lebanese passport, which was valid from June 1995 through December 2005, to enter or exit Lebanon, after he became a United States citizen on October 25, 1996, and received a United States passport in December 1997. Applicant testified that when he entered Lebanon, he would identify himself as a United States citizen and show his U.S. passport. Either because of his name or his accent, he was asked if he was of Lebanese descent. He confirmed that he was, and he was then asked if he had a Lebanese identification. He then showed his Lebanese passport which was used to help him enter Lebanon. When he exited Lebanon to return to the U.S., he used his United States passport.

Applicant testified that his Lebanese passport has expired, and he has no intention of renewing it. I can not find that his use of his Lebanese passport, in the way described above, indicated a preference for another country over the United States or exhibited the exercise of dual citizenship with Lebanon and the U.S.

Finally, while Applicant testified that he does not consider himself a citizen of Lebanon since he has become a U.S. citizen, he is willing to renounce his Lebanese citizenship if requested to do so.

When he was questioned as to what he would do if a representative of a terrorist group in Lebanon threatened his mother if he did not cooperate with them, he testified, “. . . I would make the decision not to cooperate. And then I will of course follow all the rules of the U.S., to go to the FBI and all the agencies to let them know what’s going on.” (Tr at 90).

Current Status of Lebanon

Since Applicant's mother and other relatives are citizens and residents of Lebanon, it is important to consider the status of Lebanon.

Lebanon is a “parliamentary republic” which has been in a state of war with Israel since 1973. Lebanon’s foreign policy has been heavily influence by neighboring Syria, which has also long influenced Lebanon’s internal policies as well. Syrian troop strength in Lebanon went from a high of 35,000 to 40,000 in the 1980s to complete withdrawal in 2005. However, Syria’s intelligent assets remain, and it continues to have a strong influence in Lebanese politics.

Syria provides political and material support to Hizballah, the most prominent terrorist group in Lebanon. Not only does the Lebanese government still recognize Hizballah as a legitimate resistance group, and political group, but Hizballah maintains offices in Lebanon and has official liaison officers to Lebanon’s security services. Finally, there have been findings of Lebanese security forces arbitrarily arresting and detaining individuals and instances of arbitrary or unlawful deprivation of life torture, and other abuses.

Mitigation

Applicant submitted a number of documents in support of his request to obtain a security clearance. Among these were positive letters from his brother, who is a Medical Doctor, his sister, and five additional individuals. These letters all discussed Applicant in extremely positive terms as a hard working, conscientious, loyal, and trustworthy individual. Applicant also offered documentation that exhibits his volunteer activities in such organizations as Special Olympics, Volunteer Fire Department, and his many worthy efforts to help students, primarily in the engineering field.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines B and C:

(Guideline B - Foreign Influence)

Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence). Applicant's mother and other relatives are citizens of Lebanon, a country with some interests inimical to the United States and therefore, which must be scrutinized in great detail. Relatives in Lebanon could create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal,

extenuation, or mitigation sufficient to meet her burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. This Applicant has done.

In reviewing the Disqualifying Conditions (DC) I find that DC 7. (a) applies, contact with foreign family members, who are citizens and residents in a foreign country, if that contact creates heightened risk of foreign exploitation, pressure or coercion.

Under Mitigating Conditions (MC) I have determined that MC 8. (b) applies as I find no conflict of interest because Applicant has such deep and longstanding relationships and loyalties, that any conflicts can be expected to be resolved in favor of the U.S. The primary factors that I have considered in applying MC 8. (b) and in reviewing Applicant under the “whole person concept” include: the fact that Applicant has lived in the U.S. since 1980, approximately 29 of his 49 years, and been a U.S. citizen since 1996; he is married to U.S. naturalized citizen and they have a daughter who is solely a U.S. citizen; he received all of his college training in the United States, including two Bachelor of Science degrees and one Master of Science degree, he has established a successful career here; his two brothers and one sister are U.S. citizens and residents; the very positive documents he introduced on his own behalf; and finally his self proclaimed strong feelings of affection and devotion to the U.S.

After considering all of the evidence of record on Guideline B, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR .

(Guideline C - Foreign Preference)

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant’s initial retention of his Lebanese passport raises foreign preference (Guideline C) concerns. At the time the SOR was issued, DC 10. (a), the exercise of the privilege of foreign citizenship could be argued to apply because (1) he retained his Lebanese passport. I conclude that MC 11. (b) and (e) apply to this case, since Applicant indicated a willingness to renounce his Lebanese citizenship, even though he does not believe he is a Lebanese citizen, and his foreign passport, which he only used incidentally after first showing his U.S. passport and identifying himself as a United States citizen, has expired and Applicant has no intention to renew it.

Accordingly, I find Guideline C for Applicant and I hold that at this time it is clearly consistent with national security to grant Applicant a security clearance.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant
Subparagraph 1.b.: For Applicant
Subparagraph 1.c.: For Applicant
Subparagraph 1.d.: For Applicant
Subparagraph 1.e.: For Applicant
Subparagraph 1.f.: For Applicant

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph 2.a.: For Applicant
Subparagraph 2.b.: For Applicant

DECISION

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

Martin H. Mogul
Administrative Judge