

DATE: May 16, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-06338

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although Applicant had surrendered one of his expired Lebanese passports and had applied for renunciation of his Lebanese citizenship, Applicant did not overcome the adverse implications of his demonstrated foreign preference by obtaining a Lebanese passport in 1990, renewing it in 1996, and using it to travel to Lebanon in 1991, 1996, and 1998--all in preference to his U.S. citizenship and passport (obtained in April 1991, before his first trip to Lebanon). Similarly, Applicant did not rebut his susceptibility to foreign influence based on his mother's living in Lebanon and his own real estate interests in Lebanon. Clearance denied.

STATEMENT OF THE CASE

On 17 September 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) (Item 1) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 25 September 2001, Applicant answered the SOR (Item 3) and requested an administrative decision on the record. Applicant responded to the Government's File of Relevant Material (FORM)--issued 26 November 2001; the record in this case closed 10 December 2001, the day the response was received at DOHA. The case was assigned to me on 12 December 2001, and received by me the next day, to determine whether clearance should be granted, continued, denied or revoked.

FINDINGS OF FACT

Applicant denied the allegations of paragraph 1. of the SOR, except for the allegation of subparagraph 1.d. (using his Lebanese passport to travel to Lebanon). Applicant admitted the allegations of paragraph 2. of the SOR; accordingly I incorporate those admissions as findings of fact.

Applicant--a 37-year old employee of a defense contractor--seeks access to classified information. He has not previously held a clearance.

Applicant was born in Lebanon in October 1964, the son of a U.S.-born father and a Syrian-born mother.⁽²⁾ Consequently, he is a Lebanese citizen by birth and, according to his Security Clearance Application (SCA)(SF 86) executed on 18 May 1999 (Item 4), a U.S. citizen by virtue of having been "born abroad of U.S. citizen(s)".⁽³⁾ Applicant's U.S. citizenship was formally recognized by State Department certificate issued in July 1992. However, Applicant has a U.S. passport issued in April 1991.

On 11 May 2000, Applicant described his dual citizenship in a sworn statement to the Defense Security Service (DSS) (Item 5):

My current passport for Lebanon was issued in Apr 96 and will expire in Apr 01. My previous passport was issued in Nov 90 and expired in Apr 96. These were obtained after I became a citizen of the US. It was obtained so that travel in Lebanon would be easier and safer. I use the passport in Jul 91, Dec 96, and Oct 98 when I traveled to Beirut, Lebanon to visit family.

I have no obligations or responsibilities with this passport to Lebanon because I used it. It was only used for safe and easier travel in Lebanon. Now that my relatives visit me yearly I have no intentions of travelling there.

I am willing to renounce my citizen and relinquish my passport as a condition of access if required. My loyalty is to the US.

I have never served in any foreign country's military nor performed any type of service in lieu of military service and I do not have any obligation to do so.

I have no desire to accept any rights, privileges or benefits offered by Lebanon to its citizens in preference to those of the US.

I have not and do not intend to travel to Lebanon to fulfill and (any?) type of citizenship requirements.

I do not maintain dual citizenship to protect financial interests. However my mother moved to a new condo and left their old condo in my name and my brother's name.⁽⁴⁾ I would relinquish my share to my brother if this were a matter of access for my current position.

I am not registered for military service in Lebanon nor do I vote in any foreign elections. I have never sought, held, or desire to seek any political office in Lebanon.

I have never nor will I ever use my US Government position of trust or responsibility to influence decisions in order to serve the interests of another government in preference to those of the US.

I am a US citizen. My total obligation and loyalty is to the US. I am a citizen of Lebanon by birth and would renounce it as indicated above if it was a condition for access.

Applicant's Answer to the SOR asserted that he had renounced his Lebanese citizenship and surrendered his passport. As corroboration of this claim, Applicant tendered a 24 September 2001 letter, under apparent seal, from the Consular Section of the Embassy of Lebanon:

The Embassy of Lebanon certifies that [Applicant]⁽⁵⁾ born in [city]⁽⁶⁾ 1964 and holder of Lebanese passport No. [] issued in Washington on November 19th, 1990, has applied for renunciation of his Lebanese nationality. His complete application was examined processed and sent to Beirut. He has therefore surrendered his passport to the embassy pending the completion of this procedure.

Therefore this document attesting that [Applicant] has applied for renunciation of his Lebanese Nationality, and has surrendered his passport to the embassy was issued by the Embassy of Lebanon on September 24th , 2001.

Taken at face value, the letter establishes that Applicant has applied to renounce his Lebanese citizenship. However,

neither the letter nor any of Applicant's other submissions contain any information regarding the time line for completion of the renunciation procedure or whether completion is a routine process or subject to special scrutiny. Further, the letter specifically cites Applicant's November 1990 Lebanese passport, which expired in April 1996, but makes no reference to the disposition of Applicant's April 1996 Lebanese passport, which expired in April 2001.

Applicant's Answer to the SOR admitted that he had used his Lebanese passport to visit family in Lebanon and had done so for reasons of personal safety. He does not anticipate traveling to Lebanon in the future because of the political situation in the Middle East. Applicant's 60-year old mother is separated from his father, and has lived in Lebanon at least since the time of Applicant's application for security clearance. She visits Applicant in the U.S. every two years. (7)

Applicant has reported several different versions of his real estate interests in Lebanon. His sworn statement to the DSS (Item 5) suggested that a condominium in Lebanon had been titled in the names of Applicant and his brother. His Answer to the SOR suggested that the property had no substantial value--due to the state of the Lebanese economy, and the property's location in an area of civil unrest--and that Applicant and his brother only stood to inherit the property upon their father's death. Applicant's Response to the FORM now states flatly that he has no financial interest in the condominium and that only his brother will inherit upon his father's death. The record is void of any independent evidence to corroborate any of these three versions. In a similar fashion, the record is silent on Applicant's work record or involvement in the community.

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.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FOREIGN INFLUENCE (GUIDELINE B)

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in, a foreign country;

E2.A2.1.2.8 A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in away that would force the individual to choose between loyalty tot he person(s) involved and the United States;

E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

FOREIGN PREFERENCE (GUIDELINE C)

E2.A3.1.1 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship:

E2.A3.1.2.2. Possession and/or use of a foreign passport;

E2.A.1.3. Conditions that could mitigate security concerns include:

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

E2.A2.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C³I) issued a memorandum titled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying Application of the Foreign Preference Adjudicative Guideline" (ASD, C³I Memorandum), to clarify the guideline regarding possession and/or use of a foreign passport:

The Defense Security Research Center (SRC) has recently completed a study of the efficiency and effectiveness of the implementation by the Department of Defense of the Adjudicative Guidelines and Investigative Standards approved by the President in 1997. The results indicate that DoD has successfully implemented the Adjudicative Guidelines and Investigative Standards. While the implementation of the guidelines as a whole was considered adequate, the implementation of one guideline in particular was the focus of SRC's recommendation for further attention: Guideline C, Foreign Preference. SRC found that DoD's implementation of this guideline was problematic in cases involving the possession and/or exercise of dual citizenship, including especially cases involving the use of dual passports.

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raise doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. **Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.** Modification of the Guideline is not required. (Emphasis added).

This clarification of the current adjudication policy applies to all cases in which a final decision has not been issued as of the date of this memorandum.

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

Although Applicant has been a dual citizen of Lebanon and the United States since his birth in 1964, Applicant's foreign citizenship possesses little security significance if based solely on his birth in a foreign country. For Applicant's conduct to fall within the security concerns of Guideline C, Foreign Preference, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the Government can seek to deny access under Guideline C. The Government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen. Under this assessment, I conclude the Government has established its case under Guideline C.

Although Applicant claims to prefer his U.S. citizenship to his Lebanese citizenship, his conduct belies that assertion. Applicant reasserted his Lebanese citizenship and his preference for that citizenship when he applied for a Lebanese passport in November 1990, used it to travel to Lebanon in July 1991, renewed his Lebanese passport in April 1996, and used it to travel to Lebanon in December 1996 and October 1998.

A citizen of any country, including the U.S., who travels to another country, submits to the sovereignty of that country, including application of its laws regarding visits by foreign citizens. However, a citizen of the U.S. who travels abroad only as a U.S. citizen, travels with the knowledge the U.S. Government is available to provide diplomatic assistance if the traveler encounters difficulty. A dual citizen of the U.S. and a foreign state who travels to that foreign state faces potential difficulty in obtaining U.S. diplomatic assistance, because the foreign state may insist on treating the traveler as its own citizen.

Regarding possession and use of his foreign passport, Applicant meets only one of the mitigating conditions (MC) for foreign preference. His dual citizenship is not based merely on his birth in a foreign country, but on his active assertion of his citizenship rights in that country. Applicant's voluntary assertion of his foreign citizenship rights occurred after he was a U.S. citizen. Although his conduct is lawful, there is no evidence that the conduct was formally sanctioned by the United States. Applicant now meets the mitigating condition (MC) for foreign preference pertaining to an expressed willingness to renounce his foreign citizenship, and has gone so far as to apply for renunciation. Further, Applicant meets the requirements of the ASD, C³I Memorandum--at least regarding his 1990 Lebanese passport. However, I am concerned that Applicant appears to have surrendered only the older of his two expired Lebanese passports and the fact that the record is silent on the likelihood of successful renunciation of his Lebanese citizenship. I am also concerned because Applicant's actions to surrender his passport and renounce his Lebanese citizenship seem to have been precipitated by the issuance of the SOR. (8) In the final analysis, the Government having established the disqualifying aspects of Applicant's conduct, the Applicant has a heavy burden of demonstrating that it is nevertheless still clearly consistent with the national interest to grant Applicant access to classified information. I conclude Applicant has failed to meet that burden. Accordingly, I resolve Guideline C against Applicant.

The Government has also established its case under Guideline B. Applicant's mother lives in Lebanon. Despite Applicant's assertion that he does not maintain close contact with his mother, their relationship is sufficiently close that she visits Applicant in the U.S. every two years. (9) While I consider it unlikely that Applicant's 60-year old mother is an agent of a foreign power, it does not conclusively appear that she is not in a position to be exploited by a foreign power in a way that requires Applicant to choose between his competing loyalties. In a similar fashion, Applicant appears to

have a substantial property interest in Lebanon, based on his initial statement to the DSS. He now retreats from that statement, but provides no corroboration of his claims which would permit me to conclude that his holdings are insignificant. Just as with Guideline C., Applicant has a heavy burden to demonstrate that the mitigating conditions apply to his case. I conclude that Applicant has failed to meet that burden and I have some lingering doubts about Applicant's susceptibility to foreign influence. Accordingly, I resolve those doubts against Applicant and resolve Guideline B. against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Paragraph 2. Criterion B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. Applicant's mother is a naturalized U.S. citizen, but the record does not indicate whether she became naturalized before or after Applicant's birth.
3. The record contains conflicting information regarding Applicant's U.S. citizenship. Applicant's Answer to the SOR denies the allegation that he obtained a Lebanese passport after acquiring U.S. citizenship by explaining that he moved to the U.S. in 1975 using his Lebanese passport, acquired a green card in 1976, and later obtained a U.S. passport after naturalization in 1984. However, I consider the clearance application recitation of the circumstances of Applicant's U.S. citizenship--to include specific certificate numbers and reference to citizenship based on birth abroad to U.S. parents, but not based on naturalization--to be the more reliable account of his U.S. citizenship.
4. Applicant's Answer to the SOR provides a conflicting explanation, asserting that his father has control of the property and that Applicant and his brother will not take title until his father's death, making the ownership prospective at best.
5. With a variant spelling of Applicant's last name.
6. With a different city of birth than listed on Applicant's SCA.
7. Applicant's Response to the FORM maintains that he does not maintain close contact with his mother, and that he would report any attempt to influence him through her to the appropriate authorities.

8. Although I do acknowledge that Applicant expressed a willingness to undertake these actions in his sworn statement to the DSS (Item 5).

9. Presumably, but not clear in the record, Applicant's mother is one of the family members he went to see in Lebanon during his trips in 1991, 1996, and 1998.