

DATE: December 6, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-10288

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

OVERVIEW

Security concerns remain over Applicant's foreign preference galvanized by his dual citizenship and his repeated use of his foreign passport (which he renewed in December 2000) after he became a naturalized United States (US) citizen in April 1992 and had a US passport. He traveled on his Lebanese passport 17 times, including a July 2001 visit after he received the Statement of Reasons (SOR) expressing security concerns over this use. In January 2001 he stated that he would relinquish the passport if necessary, but he did not choose to do so until September 2001. His mere assertion of an exclusive preference for the US is insufficient. On the other hand he has mitigated the allegations of foreign influence. Although his wife and his relatives are citizens of a foreign country, there is no evidence that they have ties to the government, are agents of a foreign power, or could be exploited by a foreign power in a way that would force him to choose between his ties to them and to the US. Clearance is denied.

STATEMENT OF THE CASE

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, ⁽¹⁾ so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on July 12, 2001. The SOR detailed security concerns in paragraph 1 over foreign preference (Guideline C) and in paragraph 2 over foreign influence (Guideline B). Applicant received the SOR and replied to these SOR allegations in an Answer of July 30, 2001, and admitted allegations 1.b., 1.c., 1.d., and 1.e. He requested a hearing, and the case was assigned to Department Counsel who on August 30, 2001, attested it was Ready to Proceed.

On August 30, 2001, the case was assigned to me. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing was issued on September 6, 2001, which set the matter for September 27, 2001, at a location near where Applicant works and lives. At the hearing the Government introduced two exhibits which were admitted into evidence (Exhibits 1-2). Applicant testified himself and offered three exhibits (Exhibits A, B, & C) which were admitted into evidence. He and the government requested that the record be left open for him to submit additional exhibits; and

he was given until October 9, 2001, to submit his additional exhibits. (TR 15-16) Department Counsel was given two days until October 11, 2001, to review and submit her comments. (TR 63-66, 72-73). After the hearing Applicant forwarded five documents (Exhibits D, E, F, G, & H); as the government counsel did not object, those documents were admitted into evidence on October 11, 2001. The record then closed. The transcript (TR) was received on October 10, 2001.

PROCEDURAL ISSUE

Clarification of Department of Defense Policy on Foreign Preference

The Department of Defense issued a policy memorandum on August 16, 2000. It clarified the policy on Foreign Preference, Guideline C and stated, in part:

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 mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises 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 State Government. Modification of the Guideline is not required.

Department Counsel attested that this policy was sent to Applicant as an attachment to his SOR on July 12, 2001; he received the documents on July 18, 2001. (TR 59-61)

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 39 years old, is the president of a United States (US) company (Company #1) where he has worked from 1992 to present. Company #1 does business with federal agencies; two years ago he was asked to obtain a security clearance for his corporation for a research project. Previously, neither he nor his firm needed a security clearance. His firm has been awarded numerous awards for development of defense related technologies. As an officer of the company he also is required to have a security clearance before the company can have a facility security clearance. In May 2000 he completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) to seek a security clearance. He has been an associate professor at a university in State #1 where he taught from 1984-96. He studied at another university in State #1 from 1988-91. He married his wife in September 1993, and she has an US alien registration number. (Exhibit 1; Exhibit F; TR 12, 44-49; 55-56)

In April 1983 he received a BS in mechanical engineering from a State #1 university; he received a MS in engineering in August 1984 from another university in State #1. (TR 46; Exhibit F)

Foreign Preference

Applicant was born in Syria as his parents were temporarily living there; but when he was still a baby his family returned to Lebanon where he lived until 1980 when he came to the US to study. He became a naturalized US citizen in April 1992, but he maintained his Lebanese citizenship (1) because the US permits it and (2) because of the historical significance of his Lebanese citizenship. In Lebanon government representation is based on religious population based on a survey of citizens. As his parents, sisters, brother and families still live in Lebanon, his standing as a citizen adds to the census and helps to strengthen their representation in the government. Also his holding Lebanese citizenship made travel to Lebanon to visit his family much easier. He "feel[s] absolutely no loyalty to the Lebanese government, or what it stands for." When interviewed in January 2001, he stated that he felt no need "to renounce" his Lebanese citizenship

"just to demonstrate my loyalty to the US." He would seriously consider renouncing his Lebanese citizenship only "if required." When he lived in Lebanon he had a bank account; when he traveled to the US he withdrew all of the funds; Initially he was not certain whether or not it was closed, but upon investigation he learned he does not have a bank account in Lebanon. His father gave him real estate in the mountains of Lebanon as a gift, but he states that the value of the property is minimal. He offered no documentation to support his assessment on the value of the property. At the time it was given to him in 1988 the value was \$15,000. He estimated the property would be worth \$10,000 if sold now. Another solution he proffered was to give the property back to his father; however, he offered no evidence he took that path. (Answer; Exhibits 1, 2; Exhibit F; TR 21-22, 25-29, 31-32, 56-57)

Applicant did not relinquish his Lebanese passport when he became a US citizen.

- Indeed he has used it for entering Lebanon seventeen times in the last nine years since he became a naturalized US citizen. He used his US passport for all other travel.
- When his Lebanese passport expired in December 2000, he renewed it for five years as holding a Lebanese passport considerably eases his travel into Lebanon as he does not have to obtain a visa or pay the fee of \$70 required if he were to enter on his US passport.
- When interviewed in January 2001, he stated that he would relinquish the passport if necessary to obtain a security clearance as his responsibility is to the success of his company and his employees.
- After he received the SOR, he again used his Lebanese passport from July 31 to August 8, 2001 to travel to a meeting of engineers where he gave a talk; he thought the trip would benefit his business. While he could have used his US passport, he would have had to apply for a visa.
- In his July 2001 Answer to the SOR he stated his willingness to surrender this passport as required by the August 16, 2000, Department of Defense policy on Foreign Preference, Guideline C. He received the policy letter with his SOR in July 2001.
- Applicant finally took the initiative himself a few days before his hearing to surrender his Lebanese passport by sending it via certified mail on September 22, 2001, to the General Consulate of Lebanon. On September 27, 2001, the Consul General confirmed receipt and noted his passport had been canceled.

(Answer; Exhibits 2, Exhibits A, E; TR 19-21, 29-31, 38-41, 50-52, 58-59, 60-63)

Applicant expects to live out his life in the US; and his family is rooted in American culture. He has never served in any military service and has no obligation to do so. He does not vote in Lebanon and never sought or held political office there. (Answer; Exhibit 2, Exhibit F)

Foreign Influence

Applicant's wife of is a citizen of Lebanon who recently became eligible to apply for US citizenship as she has lived here since 1993. He has three children who hold dual citizenship because they were born in the US of Lebanese parents, and he expects them to maintain their dual citizenship. His mother and father are in their 70's and hold no government positions. He has close relations with his relatives; his parents, sister, three brothers; their families are citizens of Lebanon and currently reside in Lebanon. He is continuing his contact with his family through letters and telephone calls and visits frequently. He provides no financial assistance to any of his family members in Lebanon and does not discuss his business with them. His father and brothers are in the printing business and are wealthy; his sister is an insurance agent. His wife's father lives in Liberia, Africa; but Applicant has no contact with him. (Answer; Exhibit 2; TR 22-24, 32-34, 36)

He has extensive business contacts in Europe and travels there once a month on a US passport; he also does business in Mexico. He has also traveled to China to do some research with some universities and a company there. (TR 34-36)

References

A salesman and former employee of Applicant who has known him since 1991 submitted a letter in support. He found Applicant to be a person of high integrity who loves and respects the US. He is someone who could be trusted with sensitive information. (Exhibit B)

A former student, now branch chief at a federal agency, who has known Applicant since 1986, attests that Applicant is respected by all and is of strong moral and ethical character. In his current position he has worked with Applicant on research issues. (Exhibit C)

Having known the company's research since 1996, a federal agency researcher endorsed Applicant's application as in the interests of the governmental agency where the researcher works.

(Exhibit G)

A manager at another defense contractor who has partnered with his company and has known Applicant for eight years supports Applicant for a security clearance as he has contributed and continues to contribute to the US. He knows him personally and assesses Applicant as being "very knowledgeable about his area of expertise and very opinionated and principled. (Exhibit H)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed the following relevant Adjudication Guidelines:

Guideline C - Foreign Preference⁽²⁾

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.

Conditions that could raise a security concern and may be disqualifying include:

- (1) the exercise of dual citizenship;
- (2) possession and/or use of a foreign passport⁽³⁾;

Conditions that could mitigate security concerns include:

- (2) indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

Guideline B - Foreign Influence

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: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that 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.

Conditions that could raise a security concern and may be disqualifying include:

- (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 or present in, a foreign country

Conditions that could mitigate security concerns include:

(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 a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order

to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Guideline C - Foreign Preference

If an individual acts in such a way as to indicate a preference for a foreign country over the United States, this conduct raises a security concern under Guideline C, Foreign Preference, as the individual may be prone to provide information or make decisions that are harmful to the interests of the United States. Conditions that could raise a security concern and may be disqualifying include: (1) the exercise of dual citizenship; (2) possession and/or use of a foreign passport. Further, DoD policy clarification of August 16, 2000 explains that "possession and/or use of a foreign passport" may be a disqualifying⁽⁴⁾ condition and to mitigate an Applicant must surrender his foreign passport or obtain official approval for its use.

Security concerns over Applicant's possible foreign preference arise from his active exercise of dual citizenship as he has maintained his citizenship in Lebanon even after he became a naturalized US citizen in April 1992. While dual citizenship is not prohibited *per se* (and in that sense is sanctioned by policies of the United States), any conduct indicating possible foreign preference does raise a security concern where such action would increase the risk of an individual being influenced by the needs, desires, or aims of a foreign nation.

Applicant possessed a foreign passport and used it at least 17 times on his many trips to Lebanon even after he became a naturalized citizen of the US in April 1992 and after his US passport was issued to him. Applicant chose to do so for convenience as a visa on his US passport would cost him \$70 per visit. When his Lebanese passport expired in December 2000, he renewed it for five years. Even after he received the SOR explicitly raising security concerns over his use of a foreign passport, he again used his Lebanese passport to travel there for a meeting from July 31 to August 8, 2001.

The DoD policy guidance furnishes an avenue for individuals to mitigate the security concern: an applicant must either surrender the foreign passport or obtain official approval for its use from the appropriate agency of the United States Government. Applicant indicated in January 2001 and again in July 2001 that he would surrender his passport if required to do so. He finally voluntarily complied with this guidance in September 2001, just a few days before his hearing.

Further, Applicant owns real estate in Lebanon and is closely linked to his wealthy family with a possible expectation of inheritance. He has maintained his citizenship because of the historical significance: in Lebanon government representation is based on religious population based on a survey of citizens. As his parents, sisters, brother and families still live in Lebanon, his standing as a citizen adds to the census and helps to strengthen their representation in the

government.

Thus, except for the isolated allegation that he "may own a bank account with a bank in Lebanon," Applicant failed to demonstrate he meets the mitigating conditions (MC).⁽⁵⁾ Since he denies he continues to have such an account, I find that allegation to be mitigated under MC 2., as that single indicator of possible foreign preference occurred before he obtained United States citizenship. While he maintains that his principal preference is for the US that statement by itself does not establish the preference sufficiently under DoD security policy. Applicant's repeated use of his foreign passport, continuing even in July 2001, after he was on notice by the SOR, casts doubt as to whether he can be counted on to make decisions without regard to Lebanon or his personal interests there. While he submitted several references attesting to his good character, they did not appear personally and so there is no way to establish the extent of their knowledge of his continued use of his Lebanese passport over the nine year period after he became a naturalized US citizen. While Applicant has now relinquished his foreign passport, that action has to be reviewed in the context of the history of all of his actions and his delay in doing so. Further, he took no action to indicate he would fall within MC 4 as he did not express any willingness to renounce his dual citizenship. In this case, after reviewing all of the evidence in the record and considering all of the security policies, including the August 16, 2000, policy clarification memorandum, I conclude he has not met the DoD mitigation sufficiently to indicate his clear preference for the United States. Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Acts indicative of foreign preference warrant careful scrutiny. Hence, I decide SOR paragraph 1 and subparagraphs 1.a. through 1.c. and 1.e. against Applicant and 1.d. for Applicant.

Guideline B - Foreign Influence

The Government also expressed security concerns over Applicant's possible foreign influence raised by his close ties of affection to citizens of a foreign country: his wife is a citizen of Lebanon and recently became eligible to apply for US citizenship as she has lived her since 1993. His parents and siblings are citizens of Lebanon. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family. . . and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that 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. Conditions that could raise a security concern and may be disqualifying include: (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 or present in, a foreign country. Applicant has relatively frequent contacts with his family in Lebanon.

However, these security concerns are mitigated by the fact that Applicant's relatives have no ties to their foreign government; nor is there any substantial likelihood that they would exercise foreign influence over Applicant. Merely because of these family ties Applicant is not vulnerable to duress. Given his history of responsible conduct and his clear statement that he does not discuss business-related matters with his family in Lebanon, I think it improbable that his family would create a situation that could result in the compromise of classified information. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). While acts indicative of foreign influence warrant careful scrutiny, after considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, here I conclude these ties do not raise such concerns. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.b. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1.Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2. Guideline B: 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 not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. See also the DoD August 16, 2000, Policy Clarification Memorandum, quoted above.
3. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport"
4. The policy contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country.
5. **Conditions that could mitigate security concerns include:**
 1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country;
 2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;
 3. Activity is sanctioned by the United States;
 4. Individual has expressed a willingness to renounce dual citizenship.