

DATE: August 27, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-12567

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCE

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's exercise of dual citizenship, including possession of a foreign passport and his foreign contacts have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On June 7, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on July 19, 2002. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 25, 2002, and he submitted a reply dated July 25, 2002.

The case was assigned to the undersigned for resolution on August 6, 2002.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum. (*See*, Government's Item 2).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the Form and the Applicant's reply. The Applicant is 37 years of age and married. He is a Project Manager for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant considers himself a dual citizen of both Lebanon and the United States. He was born in Saudi Arabia of Lebanese parents. Before 1982, the Applicant lived in Athens, Greece, and the United Kingdom with his family due to the civil war in Lebanon. He was unable to apply for Greek citizenship or a United Kingdom citizenship because he was younger than seventeen. In 1982, the Applicant came to the United States on a student visa. He attended a prestigious university in the United States from 1982 until December 1985, and received his Bachelors of Science Degree in Mechanical Engineering. In 1989 he became a naturalized citizen of the United States. However, he did not obtain a United States passport until 1998, that expires in 2008.

The Applicant states that he wants to maintain his citizenship with Lebanon because his father who lives in Jordan, and is a Lebanese citizen, wants him to remember his roots. It is his understanding that to maintain his citizenship, all that is required is that he must keep his Lebanese passport current.

The Applicant possesses a valid Lebanese passport. After becoming a United States citizen, the Applicant renewed his Lebanese passport on three separate occasions. In order to maintain his Lebanese citizenship, the Applicant renewed his Lebanese passport in 1991, and it remained valid until 1996. He then renewed it again in 1996, so that it was valid until 2001. He then renewed it again in 2001, so that it is valid until June 21, 2006. The Applicant states that since becoming a United States citizen, his only exercise of dual citizenship has been to renew his Lebanese passport.

Prior to obtaining a United States passport in June 1998, the Applicant traveled to Jamaica in October 1996, Canada in August 1997, and the United Kingdom in December 1997. Presumably he used his Lebanese passport for this foreign travel. The record does not contain a complete copy of the Applicant's Lebanese passport, and therefore I am unable to determine whether he has used it for any other travel.

The Applicant stated that if it is a condition of his continued employment that he is willing to renounce his Lebanese citizenship and surrender his Lebanese passport. (*See*, Government's Item 6). However, he has not yet surrendered his Lebanese passport, nor has he renounced his Lebanese citizenship.

The Applicant has never served in the Lebanese military, voted in their elections, or exercised any other rights, privileges or benefits provided exclusively for Lebanese citizens. He states that he is not employed as an agent or an official representative of any foreign government.

He states that he has no foreign property, business connections or financial interests.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's father is a citizen of Lebanon and resides in Jordan. The Applicant is in contact with his father in Jordan by e-mail once a month or every six weeks. His mother, is a citizen of Jordan, and resides in the United States. Since 1998, when she divorced his father, the Applicant's mother has lived with or near the Applicant. The Applicant visits his mother once a week. He has two sisters who were born in Lebanon and are naturalized United States citizens. One of his sisters resides in the United States, the other resides in the United Kingdom. The Applicant's former spouse is a citizen of the United Kingdom and resides in the United Kingdom. The Applicant's brother-in-law is also a citizen of the United Kingdom.

The Applicant has a number of friends and relatives that are not United States citizens. (*See*, Government's Item 6)

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 Preference

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:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Condition that could mitigate security concerns:

4. Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

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.

Condition that could raise a security concern:

1. An immediate family member, or 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:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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 voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- 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 his 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 passport 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, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant is a dual citizen of Lebanon and the United States. Since becoming a citizen of the United States in 1989, he has lived and worked in the United States, but has maintained his dual citizenship status. He has exercised dual citizenship by obtaining and repeatedly renewing his Lebanese passport after having become an American citizen. The evidence is contradictory. On the one hand, the Applicant has expressed a willingness to surrender his Lebanese citizenship and passport. However, he has also made it clear that, as to his Lebanese citizenship, he would like to keep it to satisfy his father's wishes. Presently, the Applicant has not surrendered his Lebanese passport, and still considers himself a dual citizen of Lebanon and the United States. Thus, he has not demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against the Applicant under Guideline C.

With respect to Guideline B, the Applicant has foreign contacts, as well as emotional and family ties, in Lebanon, Jordan and the United Kingdom. His family members, in this case his father, mother, and sisters are all dual citizens. His father resides in Jordan. One of his sisters and his brother-in-law reside in the United Kingdom. In addition, the

Applicant has many friends and relatives who are not United States citizens. There remains the possibility of pressure being placed on them, and through them, on the Applicant. It is Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. He has not done so. Accordingly, I cannot say that he would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C or Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines C or B.

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: Against the Applicant.

Subparas. 1.a.: Against the Applicant 1.b.: Against the Applicant 1.c.: Against the Applicant

1.d.: Against the Applicant

1.e.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b.: Against the Applicant

2.c.: Against the Applicant

DECISION

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

Darlene Lokey Anderson

Administrative Judge