

DATE: May 13, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-16807

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Thomas F. Kennedy, Jr., Esq.

SYNOPSIS

Thirty-four-year-old Naturalized American Applicant failed to mitigate false answers on a security clearance application, concerning possession of a foreign passport and foreign travel. Applicant also failed to completely mitigate foreign influence concerns and his actions failed to mitigate foreign preference concerns, even though he renounced his Lebanese citizenship and turned in his foreign passport. Clearance is denied.

STATEMENT OF THE CASE

On August 9, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement Reasons (SOR) to Applicant. The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to any classified information and recommends that his case be submitted to an Administrative Judge. On September 5, 2002, the Applicant executed a response to the SOR and requested a hearing. This case was assigned to the undersigned Administrative Judge on November 22, 2002. A notice of hearing was issued on December 2, 2002, and the hearing was held on January 3, 2003. During the hearing, two Government exhibits, two Applicant exhibits, and the testimony of the five Applicant witnesses, including the Applicant, were received. The transcript (Tr.) was received on January 10, 2003.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 34-year-old systems engineer employed by a defense contractor and is seeking a security clearance. According to his supervisor, Applicant is one of their top system engineers. ⁽¹⁾ His division manager finds him "extremely reliable." ⁽²⁾ Applicant was born in Lebanon and immigrated to the United States at the age of eight in 1976

with his mother to join his father, who had previously immigrated. ⁽³⁾

Applicant became a naturalized citizen of the United States in 1982. ⁽⁴⁾ He obtained a U.S. passport in 1990. ⁽⁵⁾

Applicant obtained a Lebanese passport in 1996. ⁽⁶⁾ He used the Lebanese passport to enter Lebanon for four trips: two in 1996; one in 1997; and one in 1999. ⁽⁷⁾ The first of these trips was with his parents to visit his grandparents and other relatives; Applicant returned to Lebanon in 1996 to marry his wife, whom he had met on the earlier visit; he returned in 1997 for a formal wedding ceremony; Applicant returned again in 1999 with his wife and son. ⁽⁸⁾

Applicant's parents are both naturalized citizens of the United States who reside in the United States and Applicant is their only child. ⁽⁹⁾ Applicant's wife became a naturalized United States citizen in 2002. ⁽¹⁰⁾ Applicant does have grandparents, uncles, aunts, a father-in-law, a mother-in-law, a brother-in-law, and three sisters-in-law who are citizens of Lebanon who reside in Lebanon. ⁽¹¹⁾

Applicant completed a security clearance application in 1993. ⁽¹²⁾ On February 11, 1999, he completed a security clearance application in which he deliberately failed to reveal he had been issued a Lebanese passport and had made four trips to Lebanon and a trip to Mexico within the previous seven years. In August 1999, a Defense Investigative Service (DIS) agent confronted Applicant with the omissions from his security clearance application. ⁽¹³⁾ Applicant admitted that he

held a Lebanese passport and had made four trips to Lebanon and one trip to Mexico since 1992. ⁽¹⁴⁾

On March 15, 2002, Applicant turned in his Lebanese passport to the Lebanese Government

and applied to renounce his citizenship ⁽¹⁵⁾ He did so because he understood that was the basis for the Drug Enforcement Agency denying him a security clearance. ⁽¹⁶⁾

The U.S. State Department advises its citizens traveling to Lebanon to exercise caution. A number of terrorist organizations operate in Lebanon. They include Hizballah, Palestinian groups hostile to the United States and Lebanese government, and Asbat-al-Ansar, a terrorist group with links to Al-Qaida. ⁽¹⁷⁾

POLICIES

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration 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 decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline B - 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 not citizens of the United States or 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:

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 or present in, a foreign country (Disqualifying Condition 1).

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 a way that could force the individual to choose between loyalty to the person(s) involved and the United States (Mitigating Condition 1).

Guideline C. - 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 and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship (Disqualifying Condition 1);

E2.A3.1.2.2. Possession and/or use of a foreign passport (Disqualifying Condition 2). Pursuant to an August 16, 2000 memorandum by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline" (ASDC3I Memo), "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."

Conditions that could mitigate security concerns include:

E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country (Mitigating Condition 1);

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship (Mitigating Condition 4).

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form

used to conduct investigations, determine employment, qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities (Disqualifying Condition 2).

Conditions that could mitigate security concerns include:

E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provide correct information voluntarily (Mitigating Condition 2).

E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts (Mitigating Condition 3).

CONCLUSIONS

Guideline C. - Foreign Preference

The Government's evidence concerning Applicant's conduct establishes Disqualifying Condition 1 and Disqualifying Condition 2. The Applicant exercised dual citizenship with Lebanon and the United States. He also possessed and used a Lebanese passport for foreign travel after he became a naturalized citizen of the United States.

Mitigating Condition 1 does not apply to Disqualifying Condition 1 in this case. Applicant's Lebanese citizenship may have resulted from his birth in that country, but Applicant affirmed that citizenship by applying for a Lebanese passport after he became an adult.

Applicant professes allegiance to the United States and denies a foreign preference for Lebanon or any other country. (18) Although Applicant has turned in his Lebanese passport and submitted an application to the Lebanese Government to renounce his citizenship, such actions do not automatically establish Mitigating Condition 4. ISCR Case No. 01-16419 at 3 (App. Bd. March 19, 2003). The evidence is uncontroverted that Applicant obtained a Lebanese passport after he became a U.S. citizen and that he made four trips to Lebanon utilizing a Lebanese passport in the 1990s. Applicant claims that he did so out of a concern for his safety when returning to Lebanon. (19) He claims to have acted promptly to resolve the matter once he understood the problem dual citizenship and a foreign passport present from a security standpoint. (20) Clearly, Applicant did so in an effort to secure a security clearance. (21)

Although he claims that he did not understand the problem until March 2002, I am troubled by the fact that Applicant concealed that he had a Lebanese passport and had engaged in foreign travel when he filled out his 1999 security clearance application. The Directive specifies that "any doubt as to whether access to classified is clearly consistent with national interest will be resolved in favor of national security." E2.2.2. Based on the facts in this case, Applicant's actions have not convinced me that he has mitigated the foreign preference concerns brought by the Government and I must find accordingly.

Guideline B - Foreign Influence

Applicant has partially refuted and mitigated the Government's allegations of foreign influence. The evidence establishes Applicant's wife has become a U.S. citizen and there is no evidence to suggest she is subject to duress. Therefore, Disqualifying Condition 1 has been mitigated.

Applicant has grandparents, uncles, aunts, a father-in-law, a mother-in-law, a brother-in-law, and three sisters-in-law who are citizens of Lebanon who reside in Lebanon. Although Applicant testified that he has virtually no contact with his grandparents, he has traveled back to Lebanon with his parents to visit them since he became an adult. Moreover, he has taken his wife and son back to Lebanon to visit relatives and his in-laws as recently as 1999. Applicant has failed to convincingly demonstrate that he does not have close ties of affection or obligation to all of his relatives and in-laws identified in subpara. 2.b of the SOR. Moreover, having such relations, who are citizens of a country in which so many terrorist groups operate, exacerbates security concerns. Therefore, Applicant has failed to mitigate Disqualifying Condition 1.

When allegations that constitute a disqualifying condition are admitted by the applicant or established by the evidence, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the disqualifying condition. Directive section E3.1.15. Although Applicant has done this with respect to his wife, he has not done so with respect all of the persons referenced in subpara. 2.b of the SOR. Once a party has the burden of proof on a particular point, the absence of evidence on that point requires the Judge to find or conclude that point against the party that has the burden of proof. ISCR Case No. 99-0511 at p. 8 (App. Bd. Dec. 19, 2000). In light of the applicable guidance in the Directive, Applicant has failed to carry his burden of proof with regard to subpara. 2.b of the SOR.

Guideline E - Personal Conduct

When confronted with his falsifications in 1999, Applicant contended, "I didn't fully understand or appreciate the clearance process." (22) He also testified on direct examination that he had not completed a security clearance (23)

application prior to the one in 1999. However, Applicant admitted on cross examination that he had completed a security clearance application in 1993. (24) In his response to the SOR, Applicant stated, "that any information on my security clearance application of February 1999 was false was such *only* because of my omission due to my haste and inadvertence." When confronted with the discrepancies by a DIS agent in August 1999, Applicant stated, "I didn't list foreign travel on my security document because I didn't think it was relevant to my working at [Applicant's employer]." (25) Applicant is not consistent. Moreover, his last statement indicates that Applicant made a conscious decision not to provide the requested information as opposed to a careless or unintentional mistake. It substantiates that the Applicant acted deliberately in failing to provide the requested information, thereby establishing Disqualifying Condition 2.

Applicant also undermined his "haste and inadvertence" explanation by admitting his wife did not become a U.S. citizen until 2002. (26) Applicant had claimed that she was a U.S. citizen when he completed his 1999 security clearance application. (27) I consider this matter only for the purpose of assessing Applicant's credibility. Although haste and inadvertence might explain incorrect yes or no responses, such as the questions regarding a foreign passport and foreign travel called for, it would not be a viable explanation for the answer in this case.

For purposes of mitigating his false statements, Applicant relies on Exhibit B, a security clearance application form that includes accurate information regarding Applicant's foreign passport and foreign travel. According to Applicant's testimony, he submitted it to the Drug Enforcement Agency in February 2002. Applicant contends that it shows a positive change in his behavior. (28) Although not specifically referencing any Guideline E mitigating conditions, Applicant argues that the falsification in 1999 is "an isolated incident," suggesting the applicability of Mitigating Condition 2.

Mitigating Condition 2 requires more than that a falsification be isolated. Any falsification also must not be recent and the individual must subsequently provide correct information voluntarily. In addition to Applicant's falsifications being as recent as his latest DoD security clearance application, he testified on direct examination that at the time he filled out the 2002 application, no one had brought the omissions from his 1999 application to his attention. (29) Applicant later admitted on cross examination that he was confronted with the omissions by the DIS agent in 1999, at which time he acknowledged them. (30) Under the circumstances, Applicant did not "voluntarily" provide the correct information. These circumstances do not afford a basis for concluding that there has been a positive change in Applicant's behavior. They also reveal that Mitigating Condition 3 has no applicability since Applicant never admitted the falsifications until his was confronted with them.

The federal government must be able to repose a high degree of trust and confidence in persons granted a security clearance. *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Security requirements include consideration of a person's judgment, reliability, and trustworthiness. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd* 367 U.S. 886 (1961). Applicant has not mitigated falsifications on his security clearance application. Those falsifications and his explanations of them demonstrate that Applicant does not possess the required judgment, reliability, and trustworthiness necessary for a security clearance.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

DECISION

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

Roger E. Willmeth

Administrative Judge

1. Tr. 46.
2. Tr. 61.
3. Tr. 16-17.
4. Government Exhibit 1 at 1; Tr. 111-112.
5. Tr. 112.
6. Tr. 113.
7. Tr. 117.
8. Tr. 36-37; Applicant Exhibit B. Applicant testified that his last trip to Lebanon occurred when his son was six-months-old. However, the transcript reflects that Applicant testified his son was born on August 3, 1997. Applicant's 2002 security clearance application indicates that his son's birth was in 1998. This is consistent with Applicant traveling to Lebanon in 1999, when his son was six-months-old.
9. Tr. 68-69, 81.
10. The best evidence of the U.S. citizenship of Applicant's wife is a copy of her U.S. passport that Applicant attached to his response to the SOR. See also Tr. 108-109 and Exhibit B.
11. Tr. 99-108.
12. Tr. 128.
13. Government Exhibit 2.
14. Ibid
15. Applicant Exhibit A; Tr. 33-34.
16. Tr. 32-33.
17. U.S State Department Consular Information Sheet for Lebanon, May 31, 2002.
18. Tr. 98.

19. Government Exhibit 2; Tr. 85-86, 118-119.

20. Tr. 32-33, 96.

21. Tr. 96.

22. Government Exhibit 2.

23. Tr. 96.

24. Tr. 128.

25. Government Exhibit 2.

26. Tr. 109.

27. Government Exhibit 1 at 4.

28. Tr. 149.

29. Tr. 96.

30. Tr. 125-127.