

DATE: April 10, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24306

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

Richard S. Stolker, Esquire

SYNOPSIS

Applicant's falsification of his foreign government contacts and his foreign travel on his clearance application suggested he could not be relied upon to tell the truth if the truth presented potential adverse consequences to his personal interest and contributed to concerns about his foreign preference and foreign influence. Although Applicant's expired Lebanese passport constructively complied with the Money Memorandum, his demonstrated foreign preference was not mitigated where Applicant had renewed his Lebanese after becoming a U.S. citizen and used his Lebanese passport to travel to Lebanon at a time when U.S. citizens were banned from traveling there and where he had registered two U.S. born children as Lebanese citizens at the Lebanese Embassy. Applicant was also subject to foreign influence where he provided financial support to his parents who still resided in Lebanon, had siblings and in-laws residing there, and had continuing contacts with a Lebanese-sponsored cultural and educational organization. Clearance denied.

STATEMENT OF THE CASE

On 21 August 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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 12 September 2002, Applicant answered the SOR and requested a hearing. The case was assigned to me on 16 October 2002, and received by me the same day. On 18 October 2002 I set the case, and initially issued a Notice of Hearing on 21 October 2002 for a hearing on 6 December 2002. On 8 November 2002, I issued an amended notice changing the time of hearing to accommodate counsel schedules.

At the hearing, the government presented six exhibits--two admitted over Applicant's objection, four admitted without objection--and one rebuttal witness; Applicant presented twenty-eight exhibits--twenty-six admitted without objection, one withdrawn before ruling, and one excluded from the record--and the testimony of one witness, including himself. DOHA received the transcript on 18 December 2002.

FINDINGS OF FACT

Applicant denied the allegations of the SOR. All the allegations are substantiated by Applicant's 2 February 2000 and 16 May 2000 sworn statements (G.E. 2 and 3 respectively). Applicant's testimony attempts to repudiate them by asserting that the DSS agent did not incorporate his draft changes (A.E. X) into his February statement. However, I specifically find credible the agent's testimony (Tr. 205-229) that Applicant's sworn statements accurately reflect the information provided by Applicant during the subject interviews, that Applicant did not submit the changes contained in A.E. X to her for incorporation into the statement, and, most important, that Applicant read both statements before signing them under penalty of 18 U.S.C. §1001.

Applicant--a 44-year old employee of a defense contractor--seeks access to classified information. He has a master's degree in information technology from a major state university.

On 18 June 1999, Applicant falsified a Security Clearance Application⁽²⁾ (SCA)(SF 86)(G.E. 1) when he answered "no" to a question that required him to disclose his contacts with foreign governments (question 14). In fact, Applicant had been in contact with the Embassy of Lebanon several times over the last twenty years.⁽³⁾ He also falsified the SCA when he answered "yes" to a question that required him to disclose his foreign travel within the last seven years (question 16), and disclosed a 1998 trip to Canada and a 1995 trip to Lebanon, but failed to disclose a 1996 trip to Lebanon. However, he did not falsify the SCA by failing to disclose a 1992 bankruptcy filing in response to a question (#40) requiring him to disclose other civil suits within the last seven years not listed elsewhere.⁽⁴⁾ He also truthfully disclosed his dual citizenship (question 3), the foreign citizenship of his spouse (question 8), the foreign citizenship and residence of his relatives (question 9), and his possession and use of a foreign passport. He truthfully reported quitting a job after being told he would be fired (question 20).⁽⁵⁾ He did not disclose that his ex-wife had filed a petition for protection from domestic violence and child abuse in January 1998.⁽⁶⁾

Applicant was born in 1958 in Lebanon. He emigrated to the U.S. in 1978 to attend college. He became a legal permanent resident. He married and divorced. married a second time, divorced, and remarried the same woman, then divorced again in 1994. He became a U.S. citizen in July 1987, under an anglicized version of his given name (A.E. J). He later changed his name back to his birth name (A.E. K).

Applicant renewed his Lebanese passport in 1994 (A.E. N). He used it to travel to Lebanon in 1995 to marry his third wife (A.E. L), a woman he had never met in person until this trip. They had corresponded and exchanged photographs for a year before the wedding. He used it again to travel to Lebanon in 1996 to bring her back to the U.S. She has since become a citizen herself (A.E. C). Applicant used his Lebanese passport because the U.S. government had an official ban on travel to Lebanon during this time (A.E. I), a ban which has now been lifted (A.E. AA). However, the U.S. still discourages travel to Lebanon (G.E. 6).

Two of Applicant's children are considered Lebanese citizens and have been registered as such with the embassy.⁽⁷⁾ Two others may be considered Lebanese citizens, but have not been registered. All Applicant's children reside in the U.S. All are U.S. citizens by birth (A.E. D). Applicant's parents are citizens of Lebanon, residing in Lebanon.⁽⁸⁾ Neither of them are employed by the Lebanese government, nor in positions that bring them into direct contact with the government. However, Applicant sends them \$3,000.00-5,000.00 per year to help them pay for their medicines.

Applicant's four siblings are citizens of Lebanon, three reside in Lebanon. None are employed by the government. Applicant's in-laws are also citizens of Lebanon, residing in Lebanon with no significant government contacts.

Since the late 1980s, Applicant's name has been registered with the business organization of the once-and-future prime minister of Lebanon, Hariri Interest or Hariri Foundation.⁽⁹⁾

As a result of this contact, Applicant was invited to, and attended a dinner in October 1999 to learn about investment and work opportunities with companies working in Lebanon and the Persian Gulf region.

Applicant and his wife are willing to renounce their Lebanese citizenships, and that of their children, to secure his

clearance (A.E. A). She is willing to surrender her now-expired Lebanese passport (A.E. O) if required (A.E. Y). He needs the clearance to keep his job (A.E. H). He asserts that he considers himself a citizen of only the U.S.

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 6.3. 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 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.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

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

E2.A2.1.3.1. A determination that the immediate family member(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.

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. The Concern: 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. . .

E2. A5.1.2. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

Burden of Proof

Initially, the government must prove controverted facts alleged in the SOR. 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.

A person who seeks access to classified information enters into a fiduciary relationship with the government 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

Applicant has been a dual citizen of Lebanon and the United States since his naturalization in 1987. Ordinarily, an 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 foreign citizenship, his conduct belies that assertion. Applicant is clearly proud of his U.S. citizenship, but he has maintained significant aspects of his foreign citizenship. While his oath of allegiance to the U.S. and his rejection of allegiance to any foreign government in the citizenship oath is powerful evidence of a preference for U.S. citizenship, the citizenship oath does not automatically operate to terminate his citizenship rights in Lebanon. Applicant acknowledged as much in his sworn statement. The fact that Lebanon may still consider him a citizen would ordinarily not affect the analysis of Applicant's preference. However, in this case Applicant reasserted his foreign citizenship and his preference for that citizenship when he renewed and used his Lebanese passport to travel to Lebanon twice after his naturalization and his obtaining a U.S. passport.

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 that 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 none of the mitigating conditions (MC) for foreign preference. (10) 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 became a naturalized U.S. citizen. Although his conduct is lawful, there is no evidence that the conduct was formally sanctioned by the United States. The State Department ban on travel to Lebanon does not constitute approval to use a foreign passport to travel there. Applicant has expressed a conditional willingness to renounce his foreign citizenship, which can be given little weight under the circumstances of this case, especially where he voluntarily chose to renew, and accept, the benefits of his foreign citizenship in preference to his U.S. citizenship.

The ASD, C³I Memorandum provides only partial relief for Applicant. The Memorandum states that Applicant's past possession and use of his foreign passport can be mitigated only if Applicant surrenders the foreign passport or obtains U.S. government approval for its use. Applicant has not surrendered his Lebanese passport, but it has expired. Even if I consider this to be constructive compliance with the Money Memorandum, that does not end the inquiry into the security significance of his conduct. Put another way, compliance with Money Memorandum is a necessary, but not necessarily sufficient, condition for mitigating his possession and use of his Lebanese passport. Further, the presence or absence of any one disqualifying or mitigating factor is not determinative of a case. I must still consider the circumstances of Applicant's conduct and determine whether that conduct demonstrates unacceptable foreign preference notwithstanding the constructive surrender of the foreign passport.

In this case, Applicant demonstrated that preference by using his Lebanese passport and by having two of his children registered as citizens with the Lebanese government. That Applicant engaged in this conduct, all otherwise lawful, in ignorance of the security implications of the conduct is beside the point. Although the Money Memorandum postdates some of Applicant's conduct, the adjudicative guidelines for foreign preference have remained essentially unchanged since before Applicant became a U.S. citizen. Yet, even the constancy of the guidelines is somewhat beside the point. To a certain extent, foreign preference is best measured by observing an Applicant's legal conduct without regard to administrative regulations or other limitations. This is because foreign preference is to be expected in a nation of immigrants. It is natural to have a certain affection for the land of one's birth, and for one's adopted homeland. It is not unusual to expect Applicant to retain some affection for Lebanon even while obtaining U.S. citizenship. Nevertheless, Applicant's conduct suggests a divided preference that presents unacceptable risks to U.S. national interest. I resolve Guideline C against Applicant.

The government has established its case under Guideline B. Applicant appears vulnerable to foreign influence. Applicant has four sibling residing overseas--three in Lebanon. His parents reside in Lebanon, and he provides significant financial support to them. Applicant's spouse has immediate family residing in Lebanon. Although none of these relatives appear to be agents of a foreign government, the record contains insufficient information about his family members to conclude that they do not constitute an unacceptable security risk as required by MC 1, particularly given the instability in the Lebanese government. In addition, Applicant's on-going contact with a culturally-focused Lebanese organization creates the potential for foreign influence. I resolve Guideline B. against Applicant.

The government has established its case under Guideline E. Applicant failed to disclose his contacts with the Lebanese government and one of his trips to Lebanon. Applicant's denials of any intent to deceive the government are unpersuasive. He gave conflicting answers on many issues, both in his testimony and in the exhibits. Generally, I do not consider him a credible witness. The omissions had the potential to influence the course of the background investigation. I resolve Guideline E. against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Paragraph 2. Guideline B: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: For 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, and by Change 4 dated 20 April 1999 (Directive).
2. Incorrectly alleged as a Questionnaire for National Security Position, an earlier name for an SF 86.
3. Applicant asserts that he visited the embassy only once, conducting most of his business by mail, and asserts that all his contacts were akin to visa requests and border crossings, contacts not required to be reported. I find the explanation not credible. Applicant contacted the embassy to renew his foreign passport, to make non-routine visa arrangements for his Lebanese wife to travel to the U.S., and to register two of his children with the Government of Lebanon. Even if his contacts were mostly by mail, they were of a type required to be disclosed on the SCA.
4. Whether the later "screen shot" of the EPSQ (A.E. Z) accurately reflects the circumstances of the EPSQ at the time Applicant completed the SCA or not, the bankruptcy question (#33) clearly asks for "filings" within the last seven years. Applicant properly answered this question "no" because his filing was outside the scope of the question. There is nothing in the wording of question 40 to suggest that a bankruptcy "filing" that was outside the scope of the bankruptcy question should be reported in question 40 simply because the "discharge" was still pending in bankruptcy court. Further, Applicant disclosed other adverse financial information, suggesting no intent to withhold his financial

condition.

5. Applicant's evidence (A.E. F) tends to corroborate Applicant's claim that this was the result of an employment relationship going sour. Applicant was employed as a network administrator and had been promised by his employer that he would be allowed to hire appropriate staff. He had not been allowed to do so, and when other staffers broke into his office--which housed sensitive equipment for the network--Applicant sent an email to all staff telling them to stay out of his office. Although Applicant was told that his violated the employer's policy against mass emails, there is no evidence that Applicant's conduct violated any employer policy. I conclude this incident has no security significance.

6. However, this omission was not alleged in the SOR as a falsification. The petition itself was alleged as adverse conduct under Guideline E. Nevertheless, Applicant's evidence (A.E. G) shows that the petition was denied, and other evidence (A.E. P, Q, R, S, T, U, and V) tends to corroborate Applicant's assertion that the domestic violence petition was retaliation for an earlier harassment complaint by Applicant that was investigated, substantiated, and prosecuted by the state, before being resolved in mediation. Both incidents were part of a larger picture of a contentious divorce and child custody proceedings relating to the education of one of Applicant's children. As with the employment incident, I conclude this incident has no security significance.

7. Applicant asserts that this was largely at the request of his ex-wife. However, the main motivation was to ensure that the children could go to Lebanon to live with their grandparents (his parents) in the event something happened to him and his wife.

8. Although they are both registered aliens in the U.S. (A.E. E), and resided here for a while, they could not adjust to the climate and returned to Lebanon.

9. Applicant states that this organization is merely a job referral organization. While it may be so, it is also an organization for the preservation of Islamic culture and advancement of Lebanese interests: "Hariri Foundation was founded in Lebanon upon a wise decision taken by H.E PM Rafic Hariri. Its mission is to make education a means for the development of the young in Lebanon. It is a non-profit institution which responded to a dire national need that resulted from the events caused by the war in the country. Hariri Foundation started its mission in Sidon in 1979; it was then called "The Islamic Institute for Culture and Higher Education" but has carried its present name since 1984 and moved to its its central offices in Beirut. It opened offices in Tripoli and Bekaa, in addition to those in Sidon, in an attempt to facilitate the granting of loans to those who--regardless of their religious or denominational affiliation--had applied to join institutions of higher learning in Lebanon . Likewise, it opened offices in Paris, London, and Washington, D.C, to keep in close contact with its student proteges who had joined around a hundred universities in Western Europe, North Africa, Canada and U.S.A." See, www.hariri-foundation.org.lb.

10. Of course, any conduct Applicant engaged in as a Lebanese citizen before becoming a U.S. citizen--such as utilizing the employment or educational services of the Hariri Foundation in the early 1980s--may be considered mitigated as occurring before his naturalization.