

DATE: March 5, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-03905

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 37-year-old engineer was born in Lebanon in 1967. He came to the U.S. in 1987, completed school, married an American, and has a family. He became a U.S. citizen in 1996. He has formally renounced his Lebanese citizenship. His parents are now resident aliens in the U.S., with the goal of becoming U.S. citizens. He has infrequent contacts with his siblings in Lebanon and elsewhere. He is clear about his obligation to protect U.S. security interests. Clearance is granted.

STATEMENT OF THE CASE

On June 25, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On July 16, 2003, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on October 9, 2003. On October 30, 2003, a Notice of Hearing was issued, setting the hearing for November 18, 2003. At the hearing, the Government did not call any witnesses but offered four exhibits, which were marked for identification as Government Exhibits (GX) 1 - 4. Applicant testified and offered nine exhibits, which were marked as Applicant's Exhibits (AX) A - I. He submitted one post hearing exhibit, which was marked as AX J. All exhibits were admitted without objection. The transcript (Tr) was received at DOHA on December 5, 2003.

FINDINGS OF FACT

Applicant is 47 years old. He was born in Lebanon on 1967 and emigrated to the United States in 1987. The SOR contains one allegation, 1.a., under Guideline C (Foreign Preference) and two allegations, 2.a. and 2.b. under Guideline B (Foreign Influence). Applicant admits SOR 1.a., with a lengthy explanation and he admits SOR 2.a. and 2.b. Applicant's admissions are incorporated herein as Findings of Fact.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline C (Foreign Preference)

1.a. - Applicant was technically a dual citizen of Lebanon despite his renunciation in his oath of allegiance to the U.S. in his naturalization hearing, because of Lebanese law. He has now formally renounced his Lebanese citizenship, by letter dated November 24, 2003, and sent by certified mail to the Consulate General of Lebanon in State A (AX J).

Guideline B (Foreign Influence)

2.a. - Applicant's father and mother now hold resident alien status in the U.S., and intend to become U.S. citizens.

2.b. - Applicant's sisters and brothers are citizens of Lebanon and reside in Lebanon or another foreign country.

Applicant was born in Lebanon to Lebanese parents in 1967. His surviving siblings, all older than he and all citizens of Lebanon, reside in Lebanon or another foreign country. Applicant emigrated to the U.S. in 1987, began attending a community college, later transferred to a university, and graduated in 1996. Upon graduation, he began working as an Engineer for his present employer, a major defense contractor (GX 4). Applicant has held a security clearance for seven years, since 1996, with no problems (Tr at 29 and GX 1 at Item 1). He met and married a U.S. citizen in 1991. He obtained permanent resident status that same year and was naturalized in 1996. He then obtained a U.S. passport. He last renewed his Lebanese passport in 1992, before becoming a U.S. citizen. It expired in 1997 (Tr at and GX 3 at 6). If he has to return to Lebanon to see his parents, he would use his U.S. passport, as he does when visiting all other countries (Tr at 44 and AX G).

Applicant remained a Lebanese citizen under Lebanese law, but stated his willingness to renounce that citizenship (GX 2 at 3 and GX 4 at 2), and has recently formally renounced that citizenship (AX J). Since coming to the U.S., he has done none of the things described in disqualifying conditions 2 - 9 (GX 4 at 2). He has assimilated himself into U.S. society and his ties to Lebanon can no longer influence him to act against U.S. interests. Most of his siblings have never been to the U.S., but at least two have children studying in the U.S.

Applicant has read the list of suspect organizations provided by the Government (GX and the Library of Congress Report on Lebanon (Official Notice document 2). He has never been, nor have any family members to the best of his knowledge, ever been connected with any of the cited organizations or activities (Tr at 43 -45).

He has no emotional or financial ties to Lebanon except personal ones based on his family members there. He has returned to Lebanon twice, once in 1991 and again in 1996, to see his family. He sends about \$1,500 to \$3,600 per years to his parents in Lebanon. Applicant believes in the U.S. Constitution and is willing to serve in the U.S. Armed Forces against his native country. (GX 2 at 4 and GX 4 at 3). He is "acutely aware of the importance of reporting through official channels any approaches or suspicious contacts made or attempts by anyone from the Lebanese government as it relates to U.S. national security" (GX 4) and he has been put on notice of organizations on a list of groups completed by an agency of the Executive Branch of the U.S. government (GX 5).

Applicant testified that Lebanon is a nation of many religious and political groups that occasionally fight each other. His parents and siblings "keep a low profile." His foreign relatives do not know what he does for a living. Even his wife knows only the company he works for, and not what he does (Tr ta 47). In any case he would promptly report any improper contact to U.S. authorities (Tr at 48, 49).

Applicant is well thought of by his colleagues. A fellow engineer who has known Applicant for two years says that Applicant "without exception performed to the highest quality and ethical standards on all assignments presented to

him" (AX A). A second colleague says that Applicant "has: shown and proved to me from our work together his ethics and love for this country without a doubt," and that Applicant is "a very trustworthy American doing his job for our country" (AX B). He offered exhibit AX D, a news media article to show that "terrorism is worldwide" and he works in a "program that is the first to go fight overseas" (Tr at 50). He "is very proud about" his work

because it is his way to "fight these people who are damaging - it s not just the U.S. but worldwide" (*Id.*). He purchases U.S. savings Bonds (AX F) to "show my love to the U.S." (Tr at 51).

Applicant's mother and father have come to the U.S. and are now legal residents here, in possession of "green cards" that show their legal status. They also obtained State A Senior Citizen Identification Cards in June and July 2002 (AX H). His parents returned to Lebanon temporarily so that his mother could have open heart surgery, but he expects them to become naturalized U.S. citizens in the near future (Tr at 53). Applicant's understanding is that he renounced his Lebanese citizenship when he became a U.S. citizen but he is "absolutely" willing to formally do it again (Tr at 53). After the hearing Applicant followed through with his statement by formally renouncing his Lebanese citizenship (AX J). Applicant responded to a notice that the FBI was looking for agents with iddle East backgrounds (Tr at 55 and AX I).

Applicant is happily married to an American of Mexican extraction and has two American born daughters, and has built his life around them. He says that he considers himself to be an American. I find this statement to be credible and supported by the record evidence, which shows his involvement in and commitment to our nation.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

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 th U.S.

Condition that could raise a security concern and may be disqualifying:

1. The exercise of dual citizenship

Conditions that could mitigate security concerns include:

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.
4. Individual has expressed a willingness to renounce dual citizenship.

Guideline B (Foreign Influence)

A security risk may exist when an individual's immediate family [members] . . . 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 . . . 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 and may be disqualifying:

1. An immediate family member . . . 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) . . . in question would not constitute an unacceptable risk.
3. Contacts and correspondence with foreign citizens are casual or infrequent.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

This 37-year-old engineer was born in Lebanon in 1967 and emigrated to the U.S. in 1987, at age 20. He married an American, has two American children, and has immersed himself in U.S. society. He renounced his Lebanese citizenship when he became a U.S. citizen in 1996 and he has recently formally renounced that citizenship again, this time in writing to the Lebanese consulate.

His parents have become resident aliens of the U.S. and intend to become U.S. citizens. Only his siblings remain in Lebanon and his relationship with them is not close or frequent. Applicant has made a strong case for his seeing himself as an American dedicated to this country.

SOR 1.a. - Since becoming a U.S. citizen in 1996, Applicant has never "exercised" any aspects of Lebanese citizenship. With his formal renunciation of his Lebanese citizenship, in November 2003, Applicant is no longer a dual citizen. Guideline 1 was, but is no longer, applicable. In any case, Mitigating Conditions (MC) 1 -dual citizenship based solely on parents' foreign citizenship, and MC 4 - willingness to renounce dual citizenship are both applicable and persuasive. Consequently, SOR 1.a. is found for Applicant.

SOR 2.a. - Applicant's mother and father are still citizens of Lebanon but are now legal residents of the U.S. and intend to obtain U.S. citizenship. SOR 2.a. is therefore found for Applicant.

SOR 2.b. - Applicant's brother and sisters are citizens of Lebanon and reside in that country or another foreign country.

Disqualifying Condition 1 (family members in foreign countries) is applicable as to siblings, and to a lesser degree to his parents, even when in the U.S.). However, based on the changing status of his parents and the relatively casual and infrequent contacts with his siblings, I conclude (1) that the risk of his being asked to disclose classified information is minimal and, even more, that his response to being asked would be to report the contact promptly to his company

security officer or a government official. I conclude from this that Mitigating Condition 1 (the relationship does not constitute an unacceptable risk) is both applicable and persuasive

I have carefully considered the situation in Applicant's area of origin and the higher risks that may occur. However, based on the totality of the record, I conclude that Applicant has shown himself to be a man of integrity and one who takes his obligation to protect U.S. security interests seriously. Considering the evidence as a whole, I conclude that the evidence does not show that any risk exists that Applicant would ever act against U.S. security interests.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE