

DATE: March 29, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-08402

## **DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Rita C. O'Brien, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro se*

### **SYNOPSIS**

Even though he was born in Oman and spent most of his childhood and teenage years in the United Arab Emirates (U.A.E.), Applicant, a Palestinian by virtue of his parents' birth in the geographical area formerly known as Palestine, did not receive citizenship in either country in the middle east because of his Palestinian nationality. After receiving his United States (U.S.) citizenship in 1989, Applicant permanently moved to the U.S. in 1995. He received his bachelors degree first then his master's degree in electrical engineering in May 2001. The foreign influence issues created by his close relatives living in foreign countries is eliminated by the fact they are not connected with a foreign government or its intelligence apparatus, and are not in a position to be exploited by the a foreign power in a way that indirectly or directly forces Applicant to choose between loyalty to the relative(s) and the U.S. Clearance is granted.

### **STATEMENT OF CASE**

On July 15, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued an SOR to the Applicant which detailed 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On July 25, 2003, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on September 8, 2003. On November 14, 2003, this case was set for hearing on December 4, 2003. The Government submitted two exhibits and Applicant submitted none. Testimony was taken from Applicant. The transcript (Tr.) was received on December 15, 2003.

### **RULINGS ON PROCEDURE**

During the preliminary portion of the hearing, Applicant testified he did not have enough time to obtain an attorney but indicated he was ready to represent himself. (Tr. 4) He also indicated he did not regret not having an attorney to represent him at the hearing. After asking him a series of questions concerning his efforts to get an attorney before the scheduled hearing, the

initial reason he did not get an attorney was due to not knowing where the hearing was going to take place. However, when he received notice on November 20, 2003, instead of trying to locate an attorney, Applicant did nothing because he believed he did not have enough time and he decided to take a pleasure trip he had previously scheduled. (Tr. 18) After hearing that Department Counsel had spoken to Applicant on four occasions in September, November and December 2003 (Tr. 21), and he never asked about obtaining an attorney or where the hearing would be, I interpreted Applicant's remarks about not having an attorney as a request to continue the case so he could retain counsel. The request was denied. (Tr. 23)

At the end of the hearing, Department Counsel moved to amend the SOR subparagraphs 1.b. and 1.d. Subparagraph 1.b. would be changed to read, "your sibling was born in Lebanon. She lived in the United Arab Emirates (U.A.E.) until 1995. She became a naturalized United States (U.S.) citizen as of 1989." Subparagraph 1.d. would be changed to read, "your grandmother is a Palestinian national living in Lebanon." Applicant had no objection to the proposed amendments. (Tr. 87) Pursuant to E3.1.17. of the Directive, the proposed amendments were granted.

The government exhibits shall be marked as "GE" followed by the number of the exhibit. Applicant's exhibits shall be marked as "AE" followed by the letter of the exhibit.

I have taken official notice of: (1) "Consular Information Sheet" for Lebanon, dated December 2, 2003; (2) "Travel Warning" for November 25, 2003; and (3) "Consular Information Sheet" for United Arab Emirates (UAE), dated November 25, 2003, distributed by the Department of State, Bureau of Consular Affairs. I have taken official notice of the March 27, 2002 publication of 28 active terrorist organizations and their objectives. The last publication accorded official notice is "Public Announcement" from the U.S. Department of State, dated November 6, 2003, reminding U.S. citizens of the continuing anti-American sentiment from certain countries in the Middle East and North Africa.

### **FINDINGS OF FACT**

The SOR alleges foreign influence (Guideline B). Applicant admitted subparagraph 1.a., 1.b., 1.c., 1.e., and 1.f., and denied subparagraph 1.d. pointing out his grandmother was living in but not a citizen of Lebanon. As is noted above, the SOR was amended to reflect this fact. Applicants admissions shall be incorporated into the following factual findings:

Applicant, 25 years old, was born in Oman in October 1978. He is a Palestinian by virtue of his parents being born in the area in the Middle East formerly known as Palestine. (Tr. 49) Thus, even though he was born in Oman, he did not receive citizenship in Oman (or any other middle eastern country) because he is Palestinian.

Within six months to a year after birth (subparagraph 1.e.), Applicant moved to the U.A.E. with his father, and attended elementary and high school. Before graduating from high school, Applicant spent most of his summers in the middle western part of the U.S. with his aunt and uncle, both naturalized U.S. citizens of Palestinian descent.<sup>(1)</sup> After receiving U.S. citizenship through his father in September 1989, Applicant came to the U.S. permanently in August 1995 to begin his post-high school education at a middle western university. By May 2001, Applicant earned a bachelors degree and a master's degree in electrical engineering. After spending four months as a grader, Applicant began working for his present employer in May 2001. Applicant is not a dual citizen. (GE 1)

Applicant's mother, 52 years old, and father, 55 years old, were born in Lebanon. (Subparagraph 1.a.) Applicant's father, naturalized as a U.S. citizen in February 1988, lived in Lebanon until he was 27 years old (Tr. 58) but has lived in the U.A.E. for the past 22 years; he works for a private company as a director in sales of fire detectors and extinguishers. (Tr. 41) When his father visits the U.S. about three times a year, he stays with Applicant. (Tr. 61) Applicant does not think his father has ever belonged to any political groups in Lebanon or the U.A.E; nor does Applicant believe his father has been imprisoned by any country. According to Applicant, his father has never been in the military. (Tr. 60)

Applicant's mother, naturalized in March 1990 as a U.S. citizen, lived in Lebanon until she was 22 years old (Tr. 58), but then moved to the U.A.E. with Applicant's father. She currently spends about half her time in the U.S. and the other half in the U.A.E. Applicant's mother is a housewife. (Tr. 40)

Applicant's oldest sister (subparagraph 1.b.), 26 years old and until 1995, had been spending her summers in the U.S. and the rest of the year in U.A.E. She became a U.S. citizen in September 1989, the same day Applicant did. She moved to the U.S. in 1995. (Tr. 46), and in December 2001, was doing a residency in dentistry, in the southeastern U.S. Now she is a dentist in a state in the middle west. Applicant's sister never worked in Lebanon, was never imprisoned in any foreign country, and was never involved in political groups, either foreign or domestic. (Tr. 50)

Applicant's uncle and aunt are Canadian citizens but currently live in the U.A.E. (subparagraph 1.c.) Applicant's uncle has lived in the U.A.E. for about 30 years. Applicant's father is a director of sales of fire detectors and extinguishers and Applicant's uncle engineers the water pressure and location of the fire detectors and extinguishers. (Tr. 40-42) Applicant's last contact with his uncle was in October 2001 when Applicant saw his uncle in Canada. Applicant's aunt, a housewife, has lived in the U.A.E. for the past 20 years. Applicant contacts her by telephone or e-mail on a monthly basis.

Applicant has two cousins (children of his uncle and aunt) that he is close to. In December 2001, the cousins were in college and Applicant's contact with them was weekly or monthly. One of his cousins is now enrolled in a U.S. graduate school while the other works for a Canadian financial company. Applicant's contact with them is now monthly. (Tr. 57)

Applicant's grandmother is a Palestinian national and has lived in Lebanon as a housewife for 40 or 50 years. (Subparagraph 1.d.; Tr. 42) He contacts her two times a year on religious holidays. Applicant's last face-to-face contact was in May 2000 when Applicant visited her in Lebanon. He last talked to her on approximately December 7, 2001. Applicant's parents and his younger brother and sister visited his grandmother in 2000. (GE 2) His grandmother was supposed to emigrate to the U.S. about five years ago but was suddenly hospitalized with thyroid and heart problems. She is under constant care at the present time and cannot travel long distances. Applicant hopes she will be strong enough to emigrate in the future.

Applicant's father lives in a house in the U.A.E. his employer rents. Neither his mother nor his father own property in the U.A.E. or any other foreign country. Applicant has no financial or property interest in Lebanon, Oman or the U.A.E. (Tr. 45)

Except for those members of his family, Applicant has never had any contact with other individuals who are foreign nationals who live outside the country. No foreign person has ever solicited him. The only foreign countries he has lived in were Oman and U.A.E.

Applicant's father recommended that Applicant should not disclose the classified elements of his work or that he has a clearance. With everything going on in the Middle East, according to his father, it is better not to attract attention by talking about it. (Tr. 66) So, Applicant tells his relatives about the general aspects of his work but not the classified part. Applicant discusses with his relatives any matter that could be obtained off the internet. (Tr. 65)

Applicant provides no financial assistance to any of his foreign relatives or to foreign or domestic educational groups or associations. Although he does not belong to any international political organizations he is aware of a terrorist organization (Hamas) and a political organization (the Palestinian Liberation Organization) within Lebanon. (Tr. 71-74; GE 2) Applicant has never had a military obligation to a foreign country. Applicant has no relative who is an agent of a foreign power. He has no contact with anyone who works for a non-U.S. intelligence or security service.

Applicant's younger brother and younger sister are U.S. citizens by virtue of birth in this country. (GE 1) Applicant's younger brother currently attends high school in the U.A.E. and lives with Applicant's father. (Tr. 51) Applicant does not believe his younger brother has ever been imprisoned. (Tr. 52) The record is silent on where his younger sister lives.

## **POLICIES**

Enclosure 2 of the Directive sets forth disqualifying conditions (DC) and mitigating conditions (MC) that must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

### **Foreign Influence (Guideline B)**

#### **Disqualifying Conditions (DC):**

1. An immediate family member, or a person to whom the individual has close bonds of affection or obligation, is a citizen of, or resident or present in, a foreign country;

#### **Mitigating Conditions (MC):**

1. A determination that the 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 U.S.

3. Contact and correspondence with foreign citizens are casual and infrequent;

### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at pages 16 and 17 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

### **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that are speculative or conjectural in nature.

The Government must establish a *prima facie* case under foreign influence (Guideline B), which establishes doubt about a person's judgment, reliability and trustworthiness. Then, the Applicant must remove that doubt with evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

### **CONCLUSIONS**

Under the foreign influence guideline, a security concern may exist when an individual's immediate family, including cohabitants, and other persons with whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S., or may be subject to duress. These situations may create the potential for vulnerability to foreign influence that could result in the compromise of classified information.

Since a significant portion the Government's case of foreign influence on the official notice documents describing the hostility that has been generated by one foreign country in the middle east toward the U.S. and its allies, I have carefully reviewed the five documents presented by the Government for official notice. While Lebanon experienced divisive civil conflict between 1975 and 1990, a power sharing arrangement among the major political factions in 1991 has allowed for an improved functioning of a central form of government. However, problems remain in the parliamentary democracy. There is terrorist activity extant among Palestinian groups in southern Lebanon. At the hearing, Applicant named two of those organizations. In addition, Syria still maintains a substantial presence in the northern part of the country.

Having weighed and balanced the official notice documents, it is clear dangerous areas of Lebanon still exist because of the government's inability to control or eliminate the terrorist activity in southern Lebanon, and the Syrian occupation in the northern part of the country because of regional politics. However, I do not believe Applicant is a security risk because of his ill grandmother lives in Lebanon and the regular contacts Applicant and other members of his family maintain with her, especially because of her poor health condition.

The U.A.E. and Oman are stable constitutional republics headed by a monarch and council of ministers. Favorable ties with the U.S. is substantiated by cooperation the two countries had during Operation Iraqi Freedom. In both countries there appears to be democratic representation (though limited) without human rights violations.

The circumstances of this case bring DC 1 of the foreign preference guideline into consideration as Applicant's mother, father,

his older sister, his uncle and aunt, and his grandmother are immediate family members, or persons to whom Applicant has close ties of affection, are citizens of, or residents or present in, a foreign country.

Applicant's mother became a U.S. citizen in 1990. Besides being a housewife, she spends half of the year in the U.S. and half the year in the U.A.E. Applicant's father became a U.S. citizen in 1988. He currently lives in the U.A.E. where he is a director of sales of fire extinguishers and detectors. Applicant's older sister received her U.S. citizenship in 1989, the same year Applicant received his citizenship. Applicant's older sister practices dentistry in the central part of the U.S. Applicant's two younger siblings are U.S. citizens. Though the record is silent on where is younger sister currently lives, Applicant's younger brother lives in the U.A.E. and attends high school. Neither Applicant's mother or father, or any of Applicant's other relatives work for a foreign government or intelligence activity. Similarly, none of Applicant's relatives are in a position to be exploited by a foreign power in way that could force Applicant to choose (by coercive or non-coercive means) between loyalty to the relative(s) and the U.S. DC1 has been mitigated by the favorable evidence under MC 1 of the foreign influence guideline.

Applicant lived in Oman for the first six months of his life and then moved to U.A.E. where he ultimately attended elementary school and high school. The fact he was born in Oman and grew up in the U.A.E. bears little if any security significance under the foreign influence guideline. Accordingly, Applicant's evidence successfully demonstrates under the specific guidelines and general factors of the whole person concept that he will successfully resist any effort at foreign influence by indirect or direct methods.

While MC 3 of the foreign influence guideline does not apply to Applicant's grandmother, parents and his sister, the mitigating condition alleviates any security concerns raised by Applicant's regular contact with his two cousins. Applicant has not seen one of his cousins in a year, and the monthly contact he has with his other cousin has substantially decreased.

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (foreign influence, Guideline B): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. 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.

Paul J. Mason

Administrative Judge

1. Although no member of his family lives at this location permanently, this is the address for Applicant's family when they are in the U.S. (GE 2)