

DATE: June 9, 2003

In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27129

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Juan Rivera, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Born in Lebanon in 1962, Applicant came to the U.S. in 1981 and was naturalized in 1988. He and his family fled the Lebanese civil war in 1975, and Applicant has not returned save for two visits 19 years apart. His parents and a sister are naturalized citizens living in the U.S. Two siblings still live in Lebanon, and two other siblings live in the UAE and Qatar. Applicant's wife and step-daughter hold dual French and Canadian citizenship, but have recently applied for permanent resident status in the U.S. Applicant's foreign ties are benign and his actions relative to other countries do not demonstrate preference for those countries over the U.S. The security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) are mitigated, and Applicant's request for clearance is granted.

**STATEMENT OF THE CASE**

On December 9, 2002, the Defense Office of Hearings and Appeals (SOR) issued a Statement of Reasons (SOR) to Applicant. The SOR informed Applicant that DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance.<sup>(1)</sup> On December 19, 2002, Applicant answered the SOR (Answer) and requested a hearing. The case was assigned to me on February 19, 2003. On March 7, 2003, DOHA issued a Notice of Hearing setting this case to be heard on March 14, 2003. All parties appeared as scheduled and the Government presented seven exhibits (GE 1 through 7), of which GE 1 and GE 2 were admitted as evidence. I granted Department Counsel's request that I take administrative notice of the information contained in GE 3 through GE 7, for identification only.<sup>(2)</sup> Applicant presented four exhibits (AE A through D), all of which were admitted without objection. Applicant also testified in his own behalf. DOHA received the transcript (Tr) on April 3, 2003. The SOR alleges facts which raise security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference).

**FINDINGS OF FACT**

Applicant admitted with explanation all of the SOR allegations. Additionally, after a thorough review of the pleadings, transcript, and

exhibits, I make the following essential findings of fact:

Applicant is 41-years-old and the sole owner of a small company that provides automated facility renovation planning and management systems to the Government under a DoD contract. He is seeking a Secret clearance so he may support the DoD through a subcontract his company won in June 2001.

Applicant was born in Lebanon in 1962. In 1975, Applicant's father, who had found work in the United Arab Emirates (UAE) as manager of a food processing facility, sent for his family so they could escape the growing civil war that was to engulf Lebanon until the early 1990's.<sup>(3)</sup> He lived and was educated in the UAE and in Qatar until 1981, when he left to attend college in the United States. On the way, Applicant stopped in Lebanon to visit two of his three sisters who still lived there with their husbands.<sup>(4)</sup>

While Applicant and his immediate family moved to the UAE, other more distant family members from Applicant's home region also moved to Persian Gulf states where Arabic is the primary language and which were more stable than Lebanon. Eventually, some of the family returned to Lebanon (e.g., two of his sisters), or relocated elsewhere (a third sister still resides in Qatar). Applicant's parents and a sister came to the United States in about 1995 and are now naturalized citizens. Still other relatives settled in Canada.<sup>(5)</sup>

In December 1983, Applicant married a U.S. citizen with whom he had one child. The couple divorced in 1994 due to the stress of financial problems stemming from his loss of employment in 1992. Applicant's child, now 15-years-old, lives with his ex-wife in the United States.<sup>(6)</sup>

Applicant earned a degree in architecture in 1987, and a degree in computer science in 1995.<sup>(7)</sup> After his first degree, Applicant worked as a computer network administrator for a large public power company. He was laid off in 1992 as part of a massive reduction in force. In 1991, with lay-offs looming, Applicant's older brother asked him if he would be interested in applying his technical expertise to his brother's furniture business in the UAE. Applicant understandably was interested in finding work and visited the UAE for a few weeks in 1991. However, any prospects for new work in the UAE evaporated when his brother's business partner, a UAE citizen, objected to bringing Applicant into the business.<sup>(8)</sup>

When he returned to the United States, Applicant continued to try to find work and was unemployed for nearly a year. He also had to cope with the deterioration of his first marriage, yet he stayed in the U.S. to continue his life as an American citizen. From 1993 until 1997, he worked as a computer-aided design operator/manager and as a part-time research assistant. In March 1997, Applicant, by then divorced, was hired as a technical consultant by an information technology firm headquartered in the midwest United States. This job required extensive travel, mostly within the United States, but also to Canada, and once to South Africa. Applicant would fly from home, stay at a customer site for several days to install his company's software and train the personnel, and return home for the weekend.

When he traveled to Canada, Applicant would visit family and friends from Lebanon who had settled there. He eventually developed an interest in a distant relative - a third cousin - living in Canada and the two were married in August 1999.<sup>(9)</sup> His new wife had divorced a French citizen 10 years earlier and had one child. She and the child had acquired Canadian citizenship through their residence in that country, but had also become French citizens by virtue of her first husband's citizenship.<sup>(10)</sup>

As Applicant's courtship of his wife-to-be progressed and they became serious about each other, Applicant often chose to visit Canada between business trips. In early 2001, Applicant's employer agreed to transfer him to their Canadian branch to support customers there. The company had been flying him to and from Canada anyway, and this arrangement allowed him to spend more time with his new wife and step-daughter in an apartment she owned there. Applicant served as a consultant to civilian activities associated with the Canadian military. SOR subparagraph 2.b alleges Applicant was a "Canadian Consultant," a term Applicant used in his statement to the Defense Security Service (DSS).<sup>(11)</sup> for the Canadian military. However, it is more accurate that Applicant was a consultant for a Canadian customer of the U.S. company, and that he was employed by the Canadian branch of a U.S. company. Further, he only filled this position for about six months before moving to his current U.S. position in June 2001.<sup>(12)</sup>

In April 2001, Applicant was transferred from Canada to work on a contract in support of a massive renovation of the Pentagon. He was offered a management position which he accepted, but he wanted to go into business for himself. In June, 2001 his wish came true when he won a subcontract to do the same work. After September 11, 2001 the automated systems he managed played a vital role in repairing the damage and in getting the entire renovation back on schedule. In recognition of the value of his company's services, Applicant has received several awards and other forms of recognition.<sup>(13)</sup> His post-9/11 efforts and dedication also have earned him the respect of the DoD renovation management team.<sup>(14)</sup>

Applicant and his wife still own an apartment in Canada. They have tried to sell it, but are renting it out until the market improves. They break even between incoming rent and their mortgage payments.<sup>(15)</sup>

In August 2000, Applicant and his wife traveled to Lebanon and Egypt as part of a one-year anniversary trip. Applicant used his U.S. passport for this travel as he has each time he has left the U.S. since becoming a U.S. citizen.<sup>(16)</sup>

In Lebanon, he visited his two sisters and their families. The sisters are housewives married to a shop owner and a restauranteur. They live in a mountainous region of Lebanon far away from Applicant's boyhood home and away from any vestiges of civil war or terrorist activity. [\(17\)](#)

Applicant and his parents have long wished to bring the rest of their family to the United States. His parents recently applied for Applicant's brother to move here as a resident alien. Applicant explained that his family has not acted on their intentions until recently because they misunderstood immigration rules about who could sponsor whom for U.S. entry. Applicant did not realize he could have sponsored his brother, so the application waited until his parents became citizens last year. The family also lacks resources to move more than one of their family here at a time. They decided to start with his older brother as he nears retirement age and will not be eligible for benefits in the UAE because he is not a citizen there. [\(18\)](#)

Applicant's younger sister is married and works in a bank in Qatar. As with all of Applicant's family, she does not have any connections to a foreign government. Applicant's parents are retired and living in the United States. Another sister, also naturalized, lives in the United States with her husband and children. None are or ever have been associated with a foreign government. As noted above, Applicant's brother in the UAE is in the furniture business and has no ties to a foreign government.

Qatar and the UAE are stable Persian Gulf states with solid ties to the United States, as evidenced by their extensive cooperation during Operation Iraqi Freedom. While both are emirates controlled by single ruling families through limited democratic representation, it does not appear that these governments engage in human rights violations or oppression of their citizenry. Nor is it likely they are engaging in aggressive intelligence gathering against the United States. [\(19\)](#)

Applicant's contact with his brother and sisters overseas is infrequent at best. He gets an occasional e-mail, but rarely speaks with them by telephone. He does not exchange cards or letters with them even during holidays. He last saw his brother in 1991 during his visit to the UAE. He has not seen his other sister in Qatar since 1981. Most of Applicant's knowledge about his siblings he gets through his parents. [\(20\)](#)

## **POLICIES**

The Directive sets forth adjudicative guidelines [\(21\)](#) to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline B (Foreign Influence) and Guideline C (Foreign Preference).

## **BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest [\(22\)](#) for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. [\(23\)](#) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government. [\(24\)](#)

## **CONCLUSIONS**

**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. [\(25\)](#)

Much of the Government's case is based on its assertion that Lebanon has either overtly supported terrorist activities or has at least done nothing to stop those activities. I have read and taken notice of the contents of GE 3 through GE 7, for identification only. These exhibits show that Lebanon

has a long history of civil unrest that has allowed terrorist activity to spread in the absence of a stable governmental authority. However, some of the information in these exhibits is dated (GE 3 was published in May 1996, GE 5 in December 1987) and may not give an accurate view of the state of affairs in Lebanon today. Historically a sectarian country in which governing power has been divided along religious/ethnic lines, Lebanon is nonetheless a parliamentary democracy. After having been disrupted by civil war between the early 1970s and 1992, Lebanon has recently enjoyed relative stability, however, it continues to deal with the presence of occupying Syrian troops in the north and east, and Palestinian refugees in the south. This latter region is the source of most of the terrorist activity in Lebanon because of the groups' focus on Israel's actions towards the Palestinians. Despite these challenges, Lebanon's economy is competitive, and characterized by a strong laissez-faire commercial tradition. The Lebanese economy is service-oriented, and banking and tourism are its main growth sectors. There are no trade sanctions aimed directly at Lebanon.<sup>(26)</sup>

It is also clear, however, that two terrorist organizations - Hizballah and HAMAS - remain active in Lebanon. Their goal is the expulsion of the influence of Israel and their allies (including the U.S.) from the Middle East. To do this, they engage in kidnappings, suicide bombings, and other violence aimed at Israelis, Americans, and their interests in the region. There is no question that parts of Lebanon may be very dangerous due to the presence of terrorists and the relative inaction of the Lebanese government to prevent their actions. However, the same can be said of certain parts of the United States that are home to groups opposed to the policies of the federal government and known to advocate the use of violence against the U.S. government. It does not follow that a person may be a security risk simply because he lives in the same area. The Government's evidence establishes only that it would be dangerous for a U.S. citizen or other westerner to travel to certain parts of Lebanon.

Nonetheless, the Government has established its case with respect to subparagraphs 1.a, 1.b, 1.c, 1.d, and 1.e. Applicant has relatives who are citizens of foreign countries living both here and abroad. Guideline B Disqualifying Condition (DC) 1<sup>(27)</sup> applies, because all of Applicant's family has foreign citizenship and/or resides in a foreign country.

By contrast, Mitigating Condition (MC) 1<sup>(28)</sup> and MC 3<sup>(29)</sup> also apply. Applicant's parents and one sister are naturalized U.S. citizens who have lived here for eight years. His sister is a housewife and his parents are retired. His wife and step-child of three years have begun the process of seeking U.S. citizenship through their application for permanent resident status. None of these relatives - or any of Applicant's other relatives, for that matter - have any connection to a foreign government or intelligence activity. Nor is there any information to suggest they have or are likely to return to Lebanon, greatly reducing any risk of exploitation. As for Applicant's two sisters living in Lebanon, they long ago moved away from any fighting or terrorist activity and live lives that have no connection with the Lebanese government. Applicant has seen them twice since leaving Beirut in 1975, and has little or no direct contact with his sisters. The same can be said for his brother in the UAE, whom he last saw for a few weeks in 1991. It appears from the record that Applicant has not seen his sister in Qatar since 1981. These are technically family ties, but they are also foreign contacts that are casual and infrequent.

The Government has failed to establish its case as to subparagraphs 1.f and 1.g. The fact that Applicant took a trip to Lebanon in 2000, without more, is of little or no security significance. He used his U.S. passport for his foreign travel, there is no available information that he acted as anything other than a U.S. citizen. There is likewise no suggestion that Applicant's travel was not properly reported or that it was undertaken for some purpose inimical to U.S. interests. It is also worth noting that the SOR does not also include Applicant's travel to Egypt, also a country with concerns about terrorist activity within its borders, during the same trip in 2000. As for the apartment Applicant and his wife own in Canada, I do not believe this is a "substantial" financial interest as contemplated by Guideline B DC 8.<sup>(30)</sup> The couple lived in the apartment less than six months, have been unable to sell it due to a poor sellers' market, and are only covering their costs by renting it out until they can sell. Further, there is no evidence that the apartment constitutes a "financial interest in a country, or in any foreign-owned or -operated business."<sup>(31)</sup> It is simply an asset Applicant is stuck with until he can sell it.

**Guideline C (Foreign Preference).** A security concern arises when an individual acts in such a way as to indicate a preference for a foreign country over the United States. He or she may be prone to provide information or make decisions that are harmful to the interests of the United States.<sup>(32)</sup> In this case, the Government has failed to establish its case that Applicant indicates a possible preference for any foreign nation over the United States.

SOR subparagraph 2.a is uncontested. Applicant spent a few weeks in the UAE exploring a business opportunity with a privately-owned furniture company when it appeared he would be laid off from his job in the United States. While it appears he would have moved there had the job come to fruition, the fact is he returned to the U.S. and has built a fairly successful career here over the past 12 years.

Likewise, SOR subparagraph 2.b is supported by the record here, but the characterization of Applicant's position is inaccurate. Applicant spent less

than six months in Canada, and was still an American employee of a U.S. company at their Canadian branch office. He supported a Canadian military installation, but this does not mean he was acting as a Canadian citizen as this allegation seems to imply. Of course, it is possible he may have stayed in Canada had not the opportunity to work at the Pentagon arisen, but this is speculation at best. The fact remains he returned to the U.S. to pursue a better opportunity. He did not seek Canadian citizenship or any other benefits from the Canadian government, and there is no information available here to show he acted on his wife's Canadian citizenship in preference to his status as a U.S. citizen.

SOR subparagraph 1.c also addresses Applicant's ownership of an apartment in Canada. Guideline C DC 5<sup>(33)</sup> and 6<sup>(34)</sup> might apply here; however, there is no evidence to show that Applicant lived in Canada to meet a citizenship requirement. He was there as a resident for less than six months as an employee of a U.S. company. Nor did he use his or his wife's foreign citizenship to protect the apartment as a financial interest. As noted in my discussion of Guideline B, SOR subparagraph 1.g, Applicant's ownership of the apartment is not a security-significant financial interest because he makes little if any money on the rent.

On balance, Applicant's interests are here in the United States. Since arriving here in 1981, his time out of the country is minimal compared to the fact he has attended two U.S. colleges, was married to a U.S. citizen for 10 years, had a child who is a U.S. citizen by birth, and, except for a short time in 2001, has lived and worked in the United States. Applicant now owns his own business and has begun a new marriage. His wife, step-daughter, and at least his older brother have begun the process of becoming U.S. citizens. Whether his sisters eventually come to the U.S. from Lebanon and Qatar remains to be seen, however, their presence overseas does not constitute an unacceptable risk based on this record.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Paragraph 2, Foreign Preference (Guideline C): FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: 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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Tr., p. 25 - 28.
3. Tr., p. 45, 55; While I have taken official notice of GE 3 through GE 7, I have also referred to the U.S. State Department website at <http://www.state.gov>. This information is readily available to the general public. *See also* ISCR Case No. 99-0452, at p. 4 (App. Bd., March 21, 2000).
4. Tr., p. 49, 57, 64.
5. Tr., p. 63.
6. GE1; Tr., p. 45, 59 - 61.
7. Tr., p. 4 - 5, 59; GE 1.
8. The UAE does not recognize emigres such as Applicant's family as citizens. This affects their standing as business people because the UAE requires 51% local citizenship ownership in all companies doing business there. Because Applicant's brother is not a UAE citizen, he must defer control of his business and ultimate decision-making authority to his Emeriti partner. See www.state.gov.
9. Tr., p. 52, 61 - 62.
10. Tr., p. 61 - 62.
11. GE 2.
12. GE 1; Tr., p. 89 - 91.
13. AEC.
14. AEA.
15. GE 2; Tr., p. 92 - 93.
16. Tr., p. 37 - 42.
17. Tr., p. 63 - 64.
18. Tr., p. 100 - 102.
19. <http://www.state.gov/r/pa/ei/bgn/5437.htm>.
20. Tr., p. 70, 75.
21. Directive, Enclosure 2.
22. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
23. *See Egan*, 484 U.S. at 528, 531.
24. *See Egan*; Directive E2.2.2.

25. Directive, E2.A2.1.1.

26. <http://www.state.gov/r/pa/ei/bgn/5419.htm#gov>.

27. 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;

28. 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;

29. E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;

30. E2.A2.1.2.8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

31. Id.

32. Directive, E2.A3.1.1.

33. E2.A3.1.2.5. Residence in a foreign country to meet citizenship requirements;

34. E2.A3.1.2.6. Using foreign citizenship to protect financial or business interests in another country;