

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant came to the U.S. from his native Lebanon for university studies in 1985, under the sponsorship of a foundation established by a prominent Lebanese philanthropist in 1979. In violation of his agreement with the foundation, Applicant married a fellow student, and elected to remain in the U.S. rather than return to Lebanon. A dual citizen of Lebanon and the U.S. since his U.S. naturalization in December 1998, Applicant exercised his foreign citizenship in November 1999 when he obtained a new Lebanese passport when in Lebanon and used that passport in preference to his U.S. passport. Foreign preference concerns are mitigated by his surrender of that passport with no intent to renew it and demonstrated intent to pursue his life as a U.S. citizen. His failure to abide by the conditions of his sponsorship reflects a clear preference for the U.S. Yet, foreign influence concerns persist because of the Lebanese citizenship and residency of close family members. Clearance is denied.

CASENO: 02-28792.h1

DATE: 02/22/2005

DATE: February 22, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-28792

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

Josiah M. Black, Esq.

**SYNOPSIS**

Applicant came to the U.S. from his native Lebanon for university studies in 1985, under the sponsorship of a foundation established by a prominent Lebanese philanthropist in 1979. In violation of his agreement with the foundation, Applicant married a fellow student, and elected to remain in the U.S. rather than return to Lebanon. A dual citizen of Lebanon and the U.S. since his U.S. naturalization in December 1998, Applicant exercised his foreign citizenship in November 1999 when he obtained a new Lebanese passport when in Lebanon and used that passport in preference to his U.S. passport. Foreign preference concerns are mitigated by his surrender of that passport with no intent to renew it and demonstrated intent to pursue his life as a U.S. citizen. His failure to abide by the conditions of his sponsorship reflects a clear preference for the U.S. Yet, foreign influence concerns persist because of the Lebanese citizenship and residency of close family members. Clearance is denied.

**STATEMENT OF THE CASE**

On October 20, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR 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 the Applicant. (1) DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on foreign preference (Guideline C) and foreign influence (Guideline B) concerns.

On October 31, 2003, Applicant filed a *pro se* Answer to the SOR and requested a decision based on the written record. On December 30, 2003, counsel for Applicant entered his appearance and requested a hearing on Applicant's behalf before a DOHA Administrative Judge. The case was assigned to me on May 3, 2004. Pursuant to formal notice of June 10, 2004, a hearing was scheduled for July 8, 2004. At the hearing, three Government exhibits and six Applicant exhibits were accepted into the record. As reflected in a transcript received July 20, 2004, testimony was taken from Applicant, his spouse, a director of the university laboratory employing Applicant, and a government contract monitor

for the program at the laboratory.

At the Government's request, administrative notice has been taken of four U.S. State Department publications pertinent to Lebanon: *Consular Information Sheet* dated February 18, 2004 (current as of March 19, 2004); *Country Reports on Human Rights Practices--2002* dated March 31, 2003; *Travel Warning* dated December 4, 2003 (current as of March 19, 2004); and *Background Note: Lebanon* dated November 2003.

## FINDINGS OF FACT

DOHA alleged foreign preference concerns related to Applicant's acquisition and use of a Lebanese passport after he had become a U.S. citizen, and his study in the U.S. sponsored by a Lebanese foundation under an agreement that he would not marry, would return to Lebanon on completion of his studies, and would not become a U.S. citizen. Foreign influence concerns were also alleged because of this sponsorship; Applicant's travels to Lebanon in 1994 and 1999; the Lebanese residency and citizenship of his mother, brother, grandmother, and aunt; the Lebanese residency and Canadian citizenship of another brother; and Applicant's contacts with these foreign relatives four to five times yearly. In his Answer, Applicant admitted he used his expired Lebanese passport to enter Lebanon in preference to his U.S. passport and once there obtained a new Lebanese passport. Citing the exigent circumstance of his father's death, Applicant maintained he did not have the time to obtain the visa necessary to enter Lebanon on his U.S. passport. Applicant also admitted he had violated the sponsorship agreement by marrying and remaining in the U.S., so he dropped out of the program in 1988. Applicant acknowledged the foreign residency and citizenship of his family members as alleged, but denied they have any political affiliation, any knowledge of his defense-related work, or that they had been improperly approached by anyone in Lebanon. His travel to Lebanon in 1994 was to assist his parents to obtain visas to travel to the U.S. to meet his spouse and child, and his 1999 visit was to attend his father's funeral. Applicant denied any loyalty to Lebanon and cited his trusted stewardship of government information for the past three-and-a-half years. Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings:

Applicant is a 40-year-old fine scale model maker and prototyping modeler for a federally-funded research laboratory affiliated with a state university. Having provided model making services on a contract basis to the laboratory from 1992, Applicant was hired on as a full-time employee in mid-May 1999. He held an interim secret clearance until it was revoked in October/November 2003 on issuance of the SOR.

Applicant was born and raised in Lebanon with his two younger brothers, who were born in 1968 and 1975. His father had been a successful and prosperous archeologist until about 1975 when his assets were stolen, destroyed, or confiscated by the Lebanese government during its civil war. The family moved about from place to place for the next few years in an effort to avoid the conflict. His father eventually opened a hardware store that he continued to operate until his death in November 1999. Applicant's mother never worked outside the home.

In the early 1980's, Applicant was pulled out of high school and pressed into service as a medic where he received airborne and weapons training. Required to pull bombing victims from wreckage at significant personal risk, Applicant had several close calls with death which led his father to push for him to leave Lebanon.<sup>(2)</sup>

Following his graduation from high school, Applicant applied for, and was accepted in 1985 into an academic program established by a Lebanese nonpartisan, non-sectarian, nonprofit foundation. With a goal of educating and training the next generation of leaders for Lebanon, the foundation was founded in 1979 by a philanthropist, who subsequently served as prime minister of Lebanon from November 1992 to 1998 and from November 2000 to October 2004.<sup>(3)</sup> The foundation agreed to sponsor and fund Applicant's study abroad, paying his tuition, housing and books, on the condition that Applicant not marry and not acquire foreign citizenship, and that he return to Lebanon on completion of his studies. Applicant agreed in writing to abide by these conditions.

Fluent in French, Applicant learned at the airport that his destination would be the U.S. rather than France, for him "a dream just come true." Applicant entered the U.S. in mid-January 1985 on a student visa. During that first semester, he studied English as a foreign language at a local private university. On completion of the intensive language program, he applied with the assistance of the foundation to several colleges in the U.S. He enrolled in a local technical institute but transferred in 1986 to a university where he studied management information systems. At a college party, Applicant met his future spouse, a native of Portugal. They were married in October 1987 in the U.S.

Applicant did not inform the Lebanese foundation of his marriage and funding for his studies continued until January or February 1988. When he applied for funding for the new semester, he learned the foundation already knew he had violated his obligations by marrying.<sup>(4)</sup> Applicant paid for one semester on his own, but dropped out in Fall 1988 as he could no longer afford it.

Shortly after Applicant's marriage, the brother closest in age to Applicant (born in 1968) came to the U.S. for college. This brother lived with Applicant and his spouse for one year until late 1988, and Applicant paid his brother's university tuition. With Applicant unable to support his brother beyond that one year, their cousin in Canada offered to host him. Applicant's brother moved to Canada where he earned bachelor's and master's degrees in computer engineering and became a Canadian citizen, making him a dual citizen of Lebanon and Canada.

In 1990, Applicant applied for political asylum in the U.S., which was granted. His spouse became a U.S. naturalized citizen in February 1990. In June 1991, they had their first child. A second daughter was born in May 1998. Applicant supported his family by self-employment as a model builder.

In July 1994, Applicant traveled to Lebanon to visit his parents and to assist them in obtaining visas to come to the U.S. to meet his spouse and their first grandchild. Applicant entered Lebanon on his Lebanese passport issued July 13, 1994, by the Lebanese consulate. That passport was valid until July 12, 1999. Applicant traveled to Canada to see his brother

and cousins in July 1995, July 1997, and August 1998. In 1995, Applicant's youngest brother attempted to obtain a visa to visit the U.S. He was denied by the U.S. Embassy because he was considered "a risk." Applicant's parents were granted visas and they visited Applicant in the U.S. in 1995, 1996, 1998, and 1999.

In 1997, the U.S. lifted a ban on travel to Lebanon by U.S. citizens that had been in place since 1985.<sup>(5)</sup> In December 1998, Applicant became a U.S. naturalized citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the U.S. if required. In early February 1999, he was issued his U.S. passport.

In May 1999, Applicant became a full-time employee of a university-affiliated laboratory. In November 1999, Applicant's father died in Lebanon. Emotionally very close to his father and morally obligated as the eldest son to attend his father's funeral, which in accord with their religious beliefs had to be held within 24 hours, Applicant arranged to travel to Lebanon through Canada. Since his Lebanese passport had expired in July 1999, and he did not have the time to obtain a visa on his U.S. passport, he contacted his aunt, a judge in Lebanon. She advised him to take both passports, and to use his expired Lebanese passport when entering Lebanon. Before leaving for Lebanon, Applicant notified his company's facility security officer of the family emergency. The FSO informed him there would be no problem since he did not have a clearance. Applicant presented his U.S. passport exiting the U.S. and in transit through Canada and France. On arrival in Lebanon, he presented his expired Lebanese passport. Refused entry, the border official hinted at a willingness to accept a bribe. After Applicant paid him \$100, the border official canceled Applicant's expired passport but allowed him to enter Lebanon. Told by Lebanese custom agents that he would need a valid Lebanese passport to exit Lebanon, Applicant obtained a new Lebanese passport while in Lebanon that was valid for one year. When leaving Lebanon, Applicant presented his new Lebanese passport. Questioned about his destination since his Lebanese passport had no visa, Applicant was allowed to leave after showing his U.S. passport confirming his U.S. citizenship. He reentered the U.S. on his U.S. passport.

Following the death of their father, the elder of Applicant's two brothers returned to Lebanon from Canada to help the younger take care of their mother. The younger brother dropped out of college to run their father's store, which he converted into a computer hardware store. With his two brothers, Applicant inherited two vacant parcels of land as well as the house in which his mother and youngest brother reside. Applicant has given his brother power of attorney to sell the parcels and give the proceeds to their mother.

Needing access to government sites and at times classified data to make as accurate as possible a model of a military vehicle for radar testing, Applicant applied for a secret security clearance on March 17, 2000. Applicant disclosed on his security clearance application his dual citizenship with Lebanon and the U.S. and his mother and youngest brother's Lebanese citizenship and residency. Concerning his other brother, he reported his residency in Lebanon but only his Canadian citizenship. As for possessing a foreign passport within the past 7 years, Applicant listed only the Lebanese passport that had expired in 1999. He did not disclose that he had a then valid Lebanese passport issued to him in November 1999, although he listed that trip to Lebanon on his father's death. Applicant was issued an interim secret clearance.

On July 22, 2002, Applicant was interviewed by a special agent of the Defense Security Service about his dual citizenship, foreign passport, foreign connections, and loyalties. Applicant admitted he was still a citizen of Lebanon as he had not formally renounced his Lebanese citizenship. He expressed a willingness to do so as he considered himself "only Lebanese on paper," but expressed concerns about the impact on his family in Lebanon:

I will renounce my Lebanese citizenship if necessary, as I do not want to be considered Lebanese. I would like to say that if I am asked to renounce my Lebanese citizenship, I do not know what, if any effect it will have on my family living in Lebanon. The intelligence community in Lebanon is everywhere, and seems to know everything going on.

Asserting that his loyalty lies solely with the U.S., Applicant indicated he would be willing to bear arms for the U.S. against any country, including Lebanon. If anyone were to attempt to improperly influence or coerce his relatives in Lebanon, he maintained he would immediately contact the FBI. Applicant volunteered that he had acquired a Lebanese passport when in Lebanon to attend his father's funeral, and he showed both this expired passport and his earlier canceled passport to the agent. Told by the agent that he should destroy his canceled passport and return the expired passport to the Lebanese consulate, Applicant indicated he would provide his FSO with proof the expired passport had been returned.

On October 20, 2003, DOHA issued an SOR to Applicant alleging foreign preference concerns, in part because of his use of his Lebanese passport in preference to his U.S. passport. Applicant attributed his use of the Lebanese passport to the difficult emotional circumstances and his failure to appreciate at the time the ramifications. In early January 2004, Applicant formally notified the Consul General of Lebanon that he no longer wanted to be a citizen of Lebanon and he returned his expired Lebanese passport. As of July 2004, Applicant had not been notified as to whether his renunciation of Lebanese citizenship had been approved.

Applicant's 63-year-old mother and his 29-year-old brother live together in Lebanon. Applicant telephones his mother once every couple of months and communicates via electronic mail three or four times per year. He speaks to his youngest brother when he calls his mother. Applicant's 36-year-old brother was employed as a computer analyst for a Canadian company in Lebanon. Applicant's contact with this brother is limited to two or three times per year as their relationship is somewhat strained because of this brother's failure to help their mother and brother emigrate from Lebanon. Applicant does not know whether his brothers are politically active in Lebanon. Nor does he know for certain whether his aunt is still a judge in Lebanon. Applicant had contact with her two or three times per year until his grandmother, who lived with this aunt, died in early 2004. Applicant has several cousins who reside in Canada whom he visits when on vacation there. He has not told them that he works for a research facility that is funded by the U.S. military.

Applicant has no assets in Lebanon beyond his share of the real estate inherited on his father's death. He and his spouse in the U.S. own their home, and have funds on deposit in financial institutions as well as a retirement fund. His spouse works as a customer service representative in their town's assessors office. Applicant votes in federal, state, and local elections in the U.S.

Despite the Lebanese foundation's loan repayment program and its policy of the settlement of loans after graduates begin working, (6) Applicant has had no contact with the foundation that sponsored his studies in the U.S. since 1988. He has not been asked to reimburse the foundation for the funds expended on his behalf, which could be as much as \$60,000 US. Applicant does not believe he has a current obligation to the foundation, although he acknowledges he will have to deal with any attempt to collect.

Applicant does not intend to travel to Lebanon in the future because of the instability in the country. He remains concerned about the impact on his family members there of his efforts to renounce his Lebanese citizenship.

A recognized expert in model-making, Applicant is passionate about his work. In addition to taking best in show in U.S. model-making competitions for the past four years, Applicant is dedicated to his job at the laboratory which involves building scale models of vehicles for a radar signature program. While he held an interim secret clearance, Applicant went to government sites on at least eight separate occasions where he collected data needed to build the scale models, some of it classified. Applicant was very careful in handling the classified information himself and ensuring team members took their security responsibilities seriously as well.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines C and B:

Guideline C, foreign preference, concerns are raised when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., as he or she may then be prone to provide information or make decisions that are harmful to the interests of the U.S. A native of Lebanon, Applicant was still a citizen of Lebanon as of his hearing. One's status as a dual national is not necessarily indicative of a foreign preference (*see* E2.A3.1.3.1., *Dual citizenship is based solely on parents' citizenship or birth in a foreign country*, as mitigating of foreign preference concerns).<sup>(7)</sup> The concern is with whether a dual citizen will actively exercise or seek rights, benefits, or privileges of that foreign citizenship. Among the specific behaviors which raise significant Guideline C issues is possession and/or use of a foreign passport (*see* E2.13.1.2.2.).

Applicant's use, as a permanent resident of the U.S, of his Lebanese passport to travel abroad before he became a U.S. citizen in December 1998 was not an active exercise of dual citizenship within E2.A3.1.2.1. (*The exercise of dual citizenship*) and does not raise foreign preference concerns (*see* E2.A3.1.3.2. *Indicators of possible foreign preference occurred before obtaining U.S. citizenship*). Similarly, his acceptance until 1988 of a foreign foundation's sponsorship for academic study abroad is not viewed as an act of foreign preference. There is no evidence he has accepted any educational, medical, or similar benefit from a foreign country since he became a U.S. citizen, so disqualifying condition E2.A3.1.2.4. *Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country*, does not apply.<sup>(8)</sup> However, Applicant's Lebanese passport did not expire until July 1999, so he continued to possess a valid foreign passport after he became a U.S. citizen. In November 1999, Applicant attempted unsuccessfully to enter Lebanon using that expired passport. He then gave the border official \$100, in essence a bribe, to gain entry into Lebanon. During his stay in Lebanon, he applied for, and obtained, a new Lebanese passport that he presented in preference to his U.S. passport when exiting the country. While he also proffered his U.S. passport to the border official on exit, it was not until he was questioned about the absence of a visa in his Lebanese passport. As clarified by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence in August 2000, use of a foreign passport raises doubt as to whether the person's allegiance to the U.S. is paramount and it could also facilitate foreign travel unverifiable by the United States.<sup>(9)</sup> DC E2.A3.1.2.2. *Possession and/or use of a foreign passport* applies.

Required under current Department of Defense policy to surrender the foreign passport, Applicant to his credit returned his expired Lebanese passport to the Lebanese consulate in January 2004, declaring at that time that he no longer wanted to be a Lebanese citizen. An expressed willingness to renounce foreign citizenship (MC E.2.A3.1.3.4.) is mitigating of foreign preference concerns. There is no indication that the Lebanese government has approved his application for renunciation. Even if he is not permitted to relinquish his Lebanese citizenship, Applicant has



demonstrated sufficiently that he is committed to the U.S. and not likely to act in preference to Lebanon in the future. In choosing to marry in the U.S. in October 1987, Applicant knew he was violating the terms of his academic sponsorship. Whereas Applicant has felt no obligation to repay the foundation, it is difficult to see how his involvement in the academic program raises foreign preference issues. Applicant showed a clear preference for the U.S. when he applied for political asylum in 1990, and became a U.S. citizen in December 1998. Even with respect to his use of his Lebanese passport in preference to his U.S. passport, Applicant was motivated not by any affinity for Lebanon, but rather because he feared what would happen if he tried to enter Lebanon on his U.S. passport without the visa that he did not have the time to obtain. SOR subparagraphs 1.a. and 1.b. are resolved in Applicant's favor.

Guideline B, foreign influence, concerns 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. Applicant's mother and younger brother are resident citizens of Lebanon. While another brother is a dual citizen of Lebanon and Canada, this sibling has lived in Lebanon since the death of their father. Applicant also has an aunt in Lebanon whom he contacted until early 2004 while his grandmother was still alive, including just before his trip to Lebanon in November 1999 when he sought her advice about his expired Lebanese passport. Applicant's situation clearly falls within disqualifying condition 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.* Furthermore, by paying a bribe to enter Lebanon and then acquiring a new Lebanese passport rather than attempt to exit Lebanon on his U.S. passport, Applicant engaged in conduct which may make him vulnerable to coercion, exploitation, or pressure by a foreign government (*see* E2.A2.1.2.6.).

Absent evidence of a current obligation to the Lebanese government for any of the costs associated with his academic sponsorship from 1985 to 1988, his failure to abide by the terms of his agreement with the foreign foundation does not fall within E2.12.1.2.6., *Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.* The nonprofit, non-sectarian foundation was founded by a wealthy Lebanese citizen for the purpose of educating the future leaders of a reconstructed Lebanon. It was not a Lebanese government foundation, and it is noted that the former chairman of the U.S. Senate Foreign Relations Committee has served on the foundation's board. While the Lebanese philanthropist later became prime minister of Lebanon, he did not assume the position before Applicant dropped out of the program. Applicant testified he could not recall whether he had agreed to repay the costs of his education. The information of record indicates that the university loan program is the most important program in the foundation, and that alumni are required to repay the loans. Yet, it is not clear that this loan repayment was in effect in 1985, which was the first year the program was established in the U.S. The foundation's programs have evolved over time with increasing stability in Lebanon to where the foundation has shifted its emphasis from sending large numbers of Lebanese students abroad for higher education to a variety of short-term educational programs, and the foundation has apparently made no effort to recoup its costs. Applicant has had no contact with the foundation since he dropped out of the program in 1988.

The potential for undue foreign influence because of the foreign citizenship and residency of close family members may be mitigated where it can be determined that the family members 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 (*see* E2.A2.1.3.1.). There is no indication that Applicant's father was ever a foreign agent of the Lebanese government. To the contrary, he was apparently imprisoned during the late 1950s for advocating

democracy. Applicant's mother has never worked outside of the home, and his two brothers work in the private sector. The older sibling is employed by a Canadian company as a computer analyst, and the younger turned his father's hardware store into a computer store. As of November 1999, Applicant's aunt was a judge in Lebanon. Although there is no evidence she was involved in military or intelligence matters, she was an employee of a foreign government. Applicant testified he has had no contact with her since early 2004, but he has had contact with her over the years, and sought her advice in November 1999 concerning his emergency travel to Lebanon. (10) Applicant testified to having no knowledge as to whether his aunt remains a judge in Lebanon. Assuming no family members are agents of the Lebanese government, Applicant still has the burden of demonstrating that his family members are not in positions where they are likely to be exploited by a foreign power.

The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non coercive means of influence being brought to bear on, or through, family members subject to the laws of a foreign nation, whether or not physically within the foreign jurisdiction. Countries that have good relations with the U.S. and respect the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses and hostility to the U.S., although the particular circumstances of each case must be taken into account. Before the civil war in Lebanon, Applicant's father was a wealthy archeologist. Not only were his assets seized by the Lebanese government, but the family went into hiding for a few years. At the time of his death, his father owned a hardware store, and bequeathed two parcels of property and the house in which Applicant's mother resides to his sons, so he had managed to acquire some assets. Before and even after his father's death, Applicant corresponded via video teleconference with his family, which suggests a certain level of income and accessibility. As noted, Applicant's aunt was (and may still be) a judge in Lebanon, a position of potentially some prominence. The State Department reports that as of 2002, the judiciary in Lebanon, independent in principle, was subject to political pressure. Even if Applicant's relationship with this aunt is as casual as the extent of their contacts (two or three times per year before his grandmother's death) suggests, mitigating condition E2.A2.1.2.3., *Contact and correspondence with foreign citizens are casual and infrequent*, does not apply with respect to his relationship with his mother and siblings.

Given the family's history, the fact that Applicant's mother never worked outside the home does not completely eliminate the risk of undue foreign influence. Applicant's youngest brother was denied entry into the U.S. as he was considered to be "a risk." It is not clear whether he was rejected simply because of age or due to his activities in Lebanon. While Applicant has only seen this brother twice, he talks with him on the phone when he calls his mother. Applicant is somewhat estranged from his other brother since the latter did not help his mother and younger brother to emigrate from Lebanon to Canada, but he still contacts him two or three times a year, and this brother visited him in the U.S. in 2001. Applicant's spouse testified Applicant is close to his family members in Lebanon, but he keeps his contact with them at a minimum because of his job. Applicant is sufficiently close to give one brother a power of attorney over his share of their inheritance in Lebanon. In light of his U.S. assets, Applicant's share of property in Lebanon is not substantial enough to affect his security responsibilities, but not enough is known about the activities and associates of his family members in Lebanon to preclude the risk of undue foreign influence. A claimed unawareness of his brothers' political activities in Lebanon does not satisfy his burden of demonstrating they are not at risk.

U.S. State Department publications chronicle the history of instability in Lebanon (albeit improved sufficiently to replace the restriction on travel to Lebanon by U.S. citizens with a travel warning in 1997), and the continuing existence of Syrian troops in Lebanon. As of late 2002, the Lebanese government and Syrian intelligence services used informer networks and monitored telephones to gather information on their perceived adversaries. Applicant admits ongoing concern as to the potential impact on his relatives of his efforts to renounce his Lebanese citizenship because "the intelligence community in Lebanon is everywhere and seems to know everything going on."

Applicant has no plans to travel to Lebanon in the future, a place he considers "very dangerous," and his loyalty to the U.S. is not questioned. Applicant has also indicated that in the event of any undue pressure or influence being brought to bear on family members, he would immediately report the contacts to the appropriate authorities. The DOHA Appeal Board has consistently held that a statement of intention about what an applicant will do in the future under some hypothetical set of circumstances is not entitled to much weight, unless there is record evidence that the applicant has acted in an identical or similar manner in the past under identical or similar circumstances. *See* ISCR Case No. 99-0501 (December 19, 2000); ISCR Case No. 01-26893 (October 16, 2002). While he has told his family members that he cannot return to Lebanon in the event of a family emergency in the future, his past actions generate an unacceptable level of uncertainty over what he might do, especially in emotionally difficult circumstances. In his favor, Applicant demonstrated appropriate care in the handling of classified information entrusted to him while he held an interim secret clearance, and both the laboratory director and the government contract monitor testified to the need for Applicant's particular expertise. Yet, I am unable to conclude based on the evidence before me that Applicant's ties to Lebanon present an acceptable risk. SOR subparagraphs 2.a., 2.b., 2.c., and 2.d. are resolved against him. Subparagraph 2.e. is found for him because of the lack of evidence that he has an obligation of repayment to the foundation that might increase his vulnerability to undue foreign influence.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Paragraph 2. Guideline B: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.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.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The SOR was issued under pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. Lebanese males 18 to 30 years old are subject to mandatory military service for one year. *See* the State Department's Consular Information Sheet on Lebanon.
3. As of the hearing, this wealthy philanthropist was still prime minister of Lebanon. Subsequent to the closure of the record in this case, he resigned as prime minister in October 2004 (*see* the latest background information on Lebanon as published by the State Department November 2004) and was assassinated in Lebanon on February 14, 2005.
4. Applicant does not know how the foundation discovered he had violated his agreement. (Tr. 127)
5. *See* the State Department's Background Note on Lebanon dated November 2003. Reflecting improvements in Lebanon's security climate, the U.S. in 1997 lifted the ban it had imposed on American citizen travel to Lebanon in 1985 and replaced it with a travel warning. This comports with Applicant's understanding of the nature of any restrictions on travel by U.S. citizens to Lebanon as of his trip in 1999; that there was "a type of warning that they travel into Lebanon" and there were no direct flights to Lebanon. (Tr. 106)
6. Information about the foundation of record indicates the foundation "reaffirms its stand on the policy of the settlement of loans after students graduate and start working. Their return to [the Foundation] will reinforce the responsibility shared by all the present generations and those coming after them." *See* exhibit A. Concerning the loan repayment program in particular, the foundation indicates that by repaying their interest-free loans, foundation alumni will be discharging an important "legal and moral obligation" and will be supporting the foundations ongoing educational mission since the repayments support educational projects in Lebanon. *See* exhibit 3.

7. Dual citizenship is recognized by the United States. While the U.S. Government does not encourage its citizens to remain dual nationals because of the complications that might ensue from obligations owed to the country of second nationality, the Department of Defense does not require the renunciation of foreign citizenship to gain access. As the DOHA Appeal Board articulated (ISCR Case No. 99-0454, October 17, 2000), dual citizenship in and of itself is not sufficient to warrant an adverse security clearance decision. Under Guideline C, the issue is whether an applicant has shown a preference through his actions for the foreign country of which he is also a citizen.

8. While the right to present oneself as a citizen of one's country when traveling may be considered a benefit of citizenship, E2.A3.1.3.4. applies to those benefits which provide support, monetary or otherwise.

9. In his memorandum of August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent 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.

10. When interviewed by the DSS agent in July 2002, Applicant indicated he maintained yearly contact with her. It was not until the hearing that Applicant volunteered she was a judge in Lebanon.