

DATE: August 6, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29923

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Ghassan Hitti, Esq.

SYNOPSIS

Applicant is a 23-year-old defense contractor employee. She became a United States citizen and used her native country's passport twice after becoming a citizen and obtaining a United States passport. She used her foreign passport for her own convenience, which indication of a foreign preference is not overcome by any mitigating factors. Applicant has not surrendered her foreign passport, and has made inconsistent statements about her intentions to surrender, and also about her dual citizenship. This record evidence raises grave questions and doubts as to Applicant's eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On December 26, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personnel security Guidelines C (Foreign Preference) and B (Foreign Influence) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

On January 10, 2003, Applicant responded to the SOR allegations. She requested her case be decided on the written record in lieu of a hearing. On April 8, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) ⁽¹⁾ was provided to the Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM on June 2, 2003. This case was assigned to me on July 14, 2003.

FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.b. and 1.c. of the SOR. Those admissions are incorporated herein as findings of fact. Applicant denied the allegations in subparagraphs 1.a. and 2.a. and 2.b. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 23-year-old female employee of a defense contractor who seeks a security clearance. She was born in Lebanon, as were all members of her immediate family. She immigrated to the United States with her family while she was a minor in 1990, when she obtained her alien registration. She obtained a college degree in the United States. She became a naturalized United States citizen on September 29, 2000. Applicant obtained a United States passport on June 15, 2001. Her parents and siblings live in the United States and are United States citizens. Applicant's father, mother, and sister hold dual citizenship with Lebanon and the United States. (Response at 1 to 7, 10 and 11; Item 3; Item 4 at 5 and 10; Item 5 at 2, 3 and 5)

Applicant traveled to Lebanon to visit her family between September 13, 1996 and August 24, 1997, and then from May 16, 1998 and August 24, 1998. She also traveled to Lebanon from May 16, 1999 to August 31, 1999. She made these trips using her Lebanese passport. That passport was reissued in 1998 for a five year term, expiring on August 5, 2003. Applicant used it twice to travel to Lebanon after she became a United States citizen and obtained a United States passport. She used her Lebanese passport because it was convenient and cost effective for her instead of using her United States passport. Applicant has not surrendered her Lebanese passport, though she now states she will surrender it. In 2001 she stated she wanted to keep her Lebanese passport for sentimental reasons, but would use it only to enter Lebanon. In 2001 Applicant admitted she held dual citizenship and if it is not necessary to renounce it for a security clearance then she would not do so. In her current statement she claims she renounced her Lebanese citizenship when she took the oath of allegiance in her naturalization ceremony in 2000. Applicant stated in 2001 that she returns to Lebanon whenever she can (school breaks, holidays, and vacations, for example). Her statements are inconsistent. (Item 4 at 1 and 6; Item 5 at 1, 3 and 4; Response at 6 and 7)

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

GUIDELINE C: Foreign Preference:

The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. Directive ¶ E2.A3 .1.1.

Conditions that could raise a security concern and may be disqualifying include:

The exercise of dual citizenship. Directive ¶ E2.A3.1.2.1.

Possession and/or use of a foreign passport. Directive ¶ E2.A3.1.2.2.

E2.A3.1.3. Conditions that could mitigate security concerns include:

Dual citizenship is based solely on parents' citizenship or birth in a foreign country. Directive ¶ E2.A3.1.3.1.

Individual has expressed a willingness to renounce dual citizenship. Directive ¶ E2.A3.1.3.4.

GUIDELINE B: Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could 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.

Directive, ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include:

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. Directive, ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

A determination that the immediate family member(s) 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. Directive, ¶ E2.A2.1.3.1.

Applicable also is the Memorandum of August 16, 2000, entitled "Guidance of DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudicative Guidelines", by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), commonly known as the "Money Memo" (Item 6).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Guideline C - Foreign Preference: The Government met its burden and established the facts by substantial evidence. Individuals who act in ways that indicated preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States. (Directive ¶ E2.A3.1.1.) Applicant used her Lebanese passport for her own convenience which indicates a foreign preference, exercising the rights and privileges of a citizen of that country, holding herself out as a citizen of that country and not as a citizen of the United States. [ISCR Case No. 99-0295, 2000 DOHA LEXIS 219 at *15 (App.Bd. October 20, 2000)] Applicant declared twice she is a dual citizen and exercises dual citizenship. Her current statement that she renounced her Lebanese citizenship in 2000 when she was naturalized is not persuasive when matched up to her 2001 statements and her actions in using her Lebanese passport. Taking the U.S. oath of allegiance is not conclusive evidence that Applicant does not have a foreign preference. [ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at *36 (App.Bd. Feb. 8, 2001)] Therefore, Disqualifying Conditions (DC) 1 (dual citizenship) and 2 (possession and use of a foreign passport) apply.

Applicant must now meet her burden to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3

(App.Bd. Dec. 19, 2002). Applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his (sic) security clearance." ISCR Case No. 01-20700 at 3. Here, Applicant has failed to meet her burden. She has not overcome the requirements of the ASDC3I memorandum which reiterates that the failure to surrender the foreign passport is a disqualifying condition. Applicant's personal convenience and desire to save money are not mitigating factors. She continues to hold her Lebanese passport. While she states she will not renew it or use it again, her prior inconsistent statements are not persuasive that contingency will not occur. While Applicant now announces her willingness to surrender her passport and asserts she really renounced her Lebanese citizenship in 2000, she has not submitted any documents or other evidence to show that in the past two years she has made that surrender or reaffirmed or reinforced her purported renunciation to contrast with her declarations to the contrary in 2001. Her statements on these two key issues are inconsistent, and her actions would have spoken louder and more persuasively. Therefore, I do not find her current statements credible. While she obtained her Lebanese citizenship because of her birth in Lebanon, it could be a Mitigating Condition (MC) here (MC 1). The willingness to renounce dual citizenship is MC 4. However, they are not sufficient here to overcome the disqualifying weight of the ASDC3I memorandum requirements and disqualifications. Applicant used her Lebanese passport after become a U.S. citizen, showing her foreign preference, and, therefore she cannot receive a security clearance.

Guideline B - Foreign Influence: Disqualifying Conditions (DC) 1 (an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen or, or resident or present in, a foreign country) and 2 (Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists) apply here. The Government presented sufficient evidence to establish its allegations. Applicant's parents and sister are dual citizens and she resides with her sister. Therefore, these two DC apply.

I find Mitigating Condition (MC) 1 (the immediate family members are not agents or a foreign power or in a position to be exploited) is applicable here. There is no record evidence that any of Applicant's family members are agents of any government. But Applicant does not meet her burden of proof on the allegation that her parents are dual citizens. Her record evidence is silent on the issue beyond her 2001 admission. She met her burden on their current residence, as they now reside in the United States.

Applicant's father, mother, and sister hold dual citizenship with Lebanon and the United States. Her two brothers are naturalized U.S. citizens, but Applicant does not provide information on their possible dual citizenship status. In her 2001 statement, Applicant asserted she lives with her sister. Applicant's Answer now denies her parent's dual citizenship and states her father resides in the United States. Applicant also stated in 2001 that her father was a physician who could not practice medicine in the United States, so he lived in Lebanon. That issue is not addressed in Applicant's current submission, so the duration of her father's present stay in the United States is not addressed. The allegations in the SOR were based upon Applicant's 2001 statement and the security clearance application. However, the current information does not specifically clarify or address the parent's dual citizenship, but only restates that they are U.S. citizens without commenting on the Lebanese citizenship issue. In 2001 Applicant stated her parents owned a home in Lebanon, but in the currently submitted documents there is no mention of that home, only a rental apartment in a U.S. city. While circumstances do change in someone's life, I am not persuaded by the continued series of incomplete or inconsistent statements from Applicant as to what the true current situation on dual citizenship and passport status is.

In *Department of the Navy v. Egan*, 484 U.S. at 531, the United States Supreme Court concludes that "[t]he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Accordingly, doubts against an Applicant's security worthiness are to be resolved against the Applicant, as I resolve them here against Applicant.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism is not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision shall be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2 Guideline B: Against Applicant

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: Against Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge

1. The Government submitted seven items in support of the SOR.