

DATE: December 10, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30030

## **DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

#### **FOR APPLICANT**

Michael M. Levin, Esquire

### **SYNOPSIS**

Applicant is a 51-year-old engineer, born in 1953 to French parents in an African country. He came to the U.S. in the 1980s, became a U.S. citizen in 1988, and obtained a U.S. passport. He used his U.S. passport for all purposes, except on one occasion in 1996, when he used his French passport to enter Lebanon, to avoid potential danger and delays in visiting his ill mother. He has family members in France and Lebanon, but their status and relationship with Applicant does not establish an unacceptable risk. He has surrendered his already expired French passport and notified French authorities of his intention to renounce French citizenship. Mitigation has been established. Clearance is granted.

### **HISTORY OF THE CASE**

On March 9, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On March 19, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The matter was originally assigned to another Administrative Judge, but was reassigned to me on June 17, 2004. A Notice of Hearing was issued on July 12, 2004, and the hearing was conducted on July 28, 2004. At the hearing, Applicant testified, and offered one exhibit, which was marked and admitted as Applicant's Exhibits (AX) A. On August 18, 2004, DOHA received a timely post hearing exhibit of 15 pages, which were marked collectively as AX B. The Government did not call any witnesses, but offered seven exhibits, which were marked and admitted as Government Exhibits (GX) 1 - 7. All exhibits were admitted as marked. The transcript (Tr) was received at DOHA on August 18, 2004.

### **FINDINGS OF FACT**

Applicant is a 51-year-old engineer. The SOR contains four allegations under Guideline B (Foreign Influence), 1.a. - 1.d.; two allegations under Guidelines C (Foreign Preference), 2.a and 2.b.), and two allegations under Guideline E (Personal Conduct). In his response, Applicant *admits* all four allegation under Guideline B, and both allegations under Guideline C. He *denies* both allegations under Guideline E (Personal Conduct). The admissions are incorporated herein and are deemed findings of fact.

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:

#### Guideline B (Foreign Influence)

1.a. - Applicant's mother is a citizen and resident of Lebanon. He maintains monthly contact with her.

1.b. - Applicant's two sisters are citizens and residents of France. He maintains frequent contact with them.

1.c. - Applicant has a sister who is a resident of Lebanon and a citizen of France. He maintains frequent contact with her.

1.d. - Applicant traveled to France in 1996.

#### Guideline C (Foreign Preference)

2.a. - Applicant possesses a French passport from the time he became a naturalized U.S. citizen in 1988 to 2001, when the passport expired.

2.b. - Applicant used his French passport instead of his U.S. passport to travel to Lebanon in 1996, to facilitate his visit to see his sick and elderly mother.

#### Guideline E (Personal Conduct)

When completing his Security Clearance Application (SF 86) on April 30, 2002, Applicant:

3.a. - mistakenly erred in his answer to Question **18 Your Foreign Activities - Passport**, when he denied possessing a French passport, which had been valid but expired in 2001.

3.b. - mistakenly erred in his answer to Question **16 Foreign Countries You Have Visited**, when he omitted any mention of his travel to Lebanon in October 1996.

In his post hearing exhibit (AX B), Applicant established that, acting through his attorney, he had surrendered his long expired French passport to French authorities and requested the papers necessary to renounce his French citizenship.

### **POLICIES**

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowing participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the voluntariness of participation;

- (6) the presence or absence of rehabilitation and other pertinent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2).

I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

### CONCLUSIONS

Applicant was born in 1953 in the Ivory Coast, but as a French citizen. He came to the United States in 1984, married a native-born American citizen (Tr at 52), and has two children, 13 and 19, both born in the United States.

*Foreign Influence* - His mother is 82 years old and not in good health. His frequent communications with her are to check on her health. She is "apolitical" (Response to SOR). One of the two sisters alleged to be living in France has moved to Lebanon with her husband since they retired. Applicant does not see the relationship as close or the contacts as frequent. They are also apolitical. His only travel to Lebanon since immigrating to the United States was in 1996, to visit his sick mother. On the way he stopped in France to see his two sisters. The entire trip took two weeks. His mother has come to visit him in the U.S. only once, in 1990 (Tr at 45). The nature of the foreign country or countries is a factor to be considered in evaluating the risk of foreign relatives to apply pressure on an applicant to reveal U.S. secrets. While France is known to be active in seeking U.S. commercial secrets (GX 4), there is nothing in the Government literature suggesting that repressive measures have been taken to coerce illegal action by American citizens. I have also evaluated the material on Lebanon submitted by Department Counsel (GX 5 and 6). I conclude that the risk involving either country is an abstract one, and I find credible Applicant's averment that his response, if ever contacted by anyone, would be to immediately contact his company's security office (Tr at 70, 71).

Disqualifying Condition (DC) 1 (an immediate family member . . . is a citizen or resident or present in, a foreign country) is applicable; but Mitigating Condition (MC) 1 (a determination that the immediate family member(s) . . . in question would not constitute an unacceptable security risk) is also applicable.

*Foreign Preference* - Applicant retained his French passport mostly because he saw no need to get rid of it, even after it expired. As soon as he realized it was an issue, he surrendered it, two years after it expired. He did not renew it and he has also begun the process of formally renouncing his French citizenship (Tr at 34 - 37), which he thought he had already done when he took the naturalization oath in 1988. He used the French passport in 1996 to visit his ill mother in Lebanon. He did so because of the unsettled situation in Lebanon at the time and his concern about identifying himself as an American (Tr at 22 - 24, 34 - 37). It was certainly for his convenience, but there was the reasonable apprehension of danger involved. He did use his U.S. passport to reenter the United States (Tr at 34). Considering that this was the only time he used the French passport since becoming an American (Tr at 33), the record does not indicate any preference for France over the U.S. No one has ever asked him to do anything against U.S. interests. As far as his relatives know, he works in commercial aviation (Tr at 38 - 40). He considers himself to be only an American (Tr at 56, 57). Considering his long residence here and involvement in U.S. society, his 16 years as a citizen, and his contributions to American society, I conclude he can be relied upon to protect U.S. interests at all times.

Disqualifying Condition 1 (the exercise of dual citizenship) is applicable, but minimally so because the sole incident, the use of the French passport in 1996 is both isolated and not recent. Likewise DC 2 (possession of a foreign passport) is applicable, but the weight to be given this concern is minimized by the expiring of the passport and its surrender in 2004. Mitigating Condition

1 (dual citizenship is based on parents' citizenship) and MC 4 (individual has expressed a willingness to renounce foreign citizenship) are also applicable. I note that Applicant has actually surrendered the now expired French passport and notified French authorities of his decision to renounce his French citizenship.

*Personal Conduct - 3.a. and 3.b.* - By the time of his April 30, 2002 SF 86, Applicant's French passport had not been used since 1996, and had expired in 2001. His explanation for not mentioning *the passport and the trip* was that he "committ[ed] an unintentional and honest mistake in remembering his trip to Lebanon as having occurred in 1995 rather than in 1996" (Response to SOR and Tr at 30), which he saw as making the trip just old enough not to come within the 7-year standard. In the context of all of the evidence, there appears to be no reason to doubt the Applicant's word, which I find to be credible. He was mistaken by a year, but it was an innocent mistake and there was no intent to deceive.

Disqualifying Condition - In that I conclude that Applicant mistakenly but unintentionally omitted the information required by Questions 15 and 16, none of the disqualifying conditions are applicable.

It is not clear how anyone with relatives in a foreign country, whether a naturalized citizen or not, can definitively establish that the relatives are not in a position to be exploited by the foreign government. The lack of any such effort in the past is a positive factor, but does not necessarily mean that there will be no such effort in the future. I have considered this point in the context of the overall record, which includes Applicant's testimony about the nature of his relationship and contacts with his relatives, their apparent lack on contact with the government of France or Lebanon, and Applicant's clear statement as to what he would do if asked to disclose classified information. Based on the totality of the record, I conclude that Applicant is sincere in his commitment to the U.S. and that he would respond to any contacts against those interests by promptly informing the FBI.

We are dealing with an individual who was born elsewhere has been in the U.S. for many years, has immersed himself in American society, through work and family, so deeply that he sees himself only as an American, and acts that way. There is no evidence that Applicant knew and understood the possible consequences his conduct might have on his ability or eligibility to serve U.S. security interests. Nothing in the status of his relatives and his relationship with them suggests that an unacceptable risk exists that Applicant might act contrary to U.S. security interests.

There is always a chance that Applicant might be asked to act improperly in the future, even though he not been asked to do so in the past. Although this is a reality, it is also speculative since there is no direct or indirect evidence that it has occurred, or is likely to occur. I find the risk that he would be asked to act improperly to be minimal. Even more importantly, I conclude he would act immediately to report the contact and not feel that he was being *forced* to choose between his relatives and his country. Overall, Applicant's explanations as to his relationships, the lack of any problems in the past, and his clear recognition of his security responsibilities, lead me to conclude that there is minimal risk of Applicant acting against U.S. interests. In summary, Applicant has demonstrated by the way he has led his life that he considers himself to be an American and committed to U.S. interests.

Overall, the record shows that Applicant's words and conduct demonstrate an unequivocal preference for the U.S. and a clear understanding of his obligations to protect U.S. security interests.

I conclude there is minimal risk that he would ever disclose classified information to unauthorized individuals. In his life, he has demonstrated that he possesses the integrity, good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

### **FORMAL FINDINGS**

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

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Guideline C (Foreign Preference) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Guideline E (Personal Conduct) For the Applicant

Subparagraph 3.a. For the Applicant

Subparagraph 3.b. For the Applicant

**DECISION**

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

**Barry M. Sax**

**Administrative Judge**