

DATE: December 5, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-31455

## **DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Peregrine D. Russell-Hunter, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a native of Lebanon who acquired dual citizenship on his naturalization in the U.S. in November 1999. His spouse, who joined him in the U.S. in ay 2002, is a Lebanese citizen. His parents and his in-laws immigrated to Canada from Lebanon. His parents possess dual citizenship (Lebanon and Canada); his in-laws are Lebanese citizens with permanent residency in Canada. While two siblings are dual citizens of Lebanon and Canada who reside in Canada, his other siblings are dual citizens of the U.S. and Lebanon who live in the U.S. The foreign citizenship and/or residency of close family members present little risk of undue foreign influence where the family members are not agents of a foreign power, reside either in the U.S. or in Canada (a nation with good relations with the U.S.), and do not actively exercise Lebanese citizenship. Clearance is granted.

### **STATEMENT OF THE CASE**

On February 12, 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 Influence (Guideline B) concerns.

On March 3, 2003, Applicant executed an Answer to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on June 27, 2003, and a hearing was scheduled for July 16, 2003. At the hearing held as scheduled, two Government exhibits and fourteen Applicant exhibits were entered into the record. Testimony was taken from Applicant, his spouse, his pastor at church, a fellow church member, his secretary at work, and from a supervisor at a previous job, as reflected in a transcript received by DOHA on July 28, 2003.

On the Government's motion, SOR subparagraph 1.j. was amended to reflect Applicant's travel to Lebanon in 1999 in addition to the trips in 1995 and 2000 that were alleged. Also favorably received was a request by the Government to

take administrative notice of two U.S. Department of State publications pertaining to Lebanon: *Consular Information Sheet*, dated May 31, 2002 (information current as of July 12, 2003), and *Country Report on Human Rights Practices-2002*, released March 31, 2003.

## FINDINGS OF FACT

DOHA alleged as raising Foreign Influence concerns the Lebanese citizenship and Canadian residency of Applicant's spouse and her parents; the Lebanese/Canadian dual citizenship of his parents, who spend half their time in Lebanon where they own property; his father's former service in the Lebanese military; the Lebanese/U.S. dual citizenship of two siblings living in the U.S.; the Lebanese/Canadian dual citizenship and Canadian residency of his other siblings; Applicant's travels to Lebanon and Canada to visit family members; and his contact with a cousin serving in the Lebanese Army. Also alleged under Guideline B was Applicant's declining to provide additional information about his parents and their property when he was interviewed in November 2001.

Applicant denied his spouse was a Canadian resident, citing her permanent residence in the U.S. since August 2002. While he admitted his parents still own property in a rural area of Lebanon, Applicant indicated his parents now spend their time in Canada. Applicant admitted with explanation the remaining allegations. Those 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 of fact:

Applicant is a 35-year-old principal information systems engineer with a doctorate degree in engineering (electrical and computer) awarded in October 1998. He has been employed since August 2000 by a federally funded research and development corporation. Applicant seeks a security clearance for his duties.

Applicant was born in Lebanon in May 1968. At the time of his birth, his father was serving in the Lebanese Army. The following year, his father resigned at the rank of corporal. The youngest of five children in a Lebanese Orthodox Christian family of modest means, Applicant was sent to the seminary at age ten to study for the priesthood. He returned home from the monastery after two years. With opportunities becoming more limited for Orthodox Christians in Lebanon, (2) his parents urged their children to leave Lebanon. The elder of Applicant's two sisters married a U.S. native citizen and immigrated to the U.S. in 1981. With her naturalization in the U.S. in 1988, she acquired dual citizenship (U.S. and Lebanon). While visiting his sister in the U.S. in 1983, Applicant's oldest brother met his future spouse. He immigrated to the U.S. and subsequently became a dual citizen of Lebanon and the U.S. with his U.S. naturalization in 1990.

On completing his secondary studies in 1986, Applicant applied for a student visa to study in the U.S. While awaiting approval on his application, he took at least two courses at a Lebanese university. In 1987, he came to the U.S. on a student F-1 visa, leaving behind in Lebanon his parents and two siblings (a sister and a brother). He enrolled in a local community college before transferring to a university with 69 credits earned (six from the Lebanese institution). As Applicant was pursuing higher education in the U.S., those siblings in Lebanon emigrated from Lebanon to Canada in 1990, and acquired dual citizenship (Lebanon and Canada) four years later. His parents left Lebanon and joined Applicant in the U.S. in 1991. After two years here, they moved to Canada to be near their children there and her brothers. Applicant's parents became dual citizens of Lebanon and Canada in 1997. Although they maintained their primary residence in Canada, Applicant's parents kept the family home in Lebanon where they stayed on visits back to see family members (primarily Applicant's paternal uncles).

Applicant earned his Bachelor of Science in electrical engineering, *magna cum laude*, in February 1991, and his Master of Science in the same discipline in June 1993. Applicant elected to pursue his life and career in the U.S. while his parents moved to Canada. Over the next five years, Applicant worked as a software engineer while pursuing his doctorate degree at night. In October 1998, he was awarded his Ph. D in electrical and computer engineering.

Eight years after Applicant arrived in the U.S., he went to Lebanon in August 1995 to show off his accomplishments to relatives (uncles, aunts, cousins) and to visit his parents who were there at the time. He returned to Lebanon for a month over the February/March 1999 time frame, again entering Lebanon on a Lebanese passport issued to him in May 1995 for a five-year term. He stayed in the family home when in Lebanon. Following his parents' move to Canada, Applicant

also traveled to Canada at least once per year to spend the Christmas holidays with them.

In March 1999, Applicant commenced employment as a project lead on an Internet technology project with a start-up company. He was brought in to restart a project in which the company had already invested several million dollars. Applicant managed a major technical turnaround with a successful result. After the product was delivered, the position of director of Internet technology was created for Applicant. While working for this company, Applicant became a naturalized citizen of the U.S. in mid-November 1999 and he acquired a U.S. passport valid to November 2004. Applicant used this U.S. passport the following day on business travel to the United Kingdom.

Circa July 2000, Applicant traveled to Lebanon to visit relatives, including his mother who was in Lebanon at that time. He traveled to Lebanon on his U.S. passport. During that trip, Applicant was introduced through family connections (his mother had become acquainted with her parents in Canada) to his future spouse, a native citizen of Lebanon who had immigrated to Canada in 1993 with her parents and siblings. Applicant's future spouse was in Lebanon taking care of her ailing grandfather and awaiting a visa for her grandfather to accompany her to Canada. Applicant and his future spouse continued their relationship in North America, with Applicant traveling to Canada on his U.S. passport at least seven times between October 2000 and June 2001.

Planning to marry, Applicant applied in February 2001 for a visa for his fiancée to move to the U.S. While awaiting approval of her application, they married in Canada in July 2001. In September 2001, the U.S. Immigration and Naturalization Service (INS) approved the fiancée petition. With her change of marital status, Applicant was required to reapply for his spouse to enter the U.S. While awaiting the visa, Applicant traveled to Canada once a month and they talked two to three times a day by telephone. In late April 2002, Applicant's spouse was granted a K-3 visa, and she joined Applicant in the U.S. a few days later. In August 2002, she acquired U.S. permanent residency status. She intends to apply for U.S. citizenship as soon as she is eligible.

Wanting to put his education and abilities to use for the benefit of the Government, Applicant left his lucrative position with the commercial software company and in August 2000 went to work for his current employer, a federally funded research and development corporation. Needing a security clearance for his duties as a principal information systems engineer, Applicant executed a security clearance application (SF 86) on August 23, 2000, on which he was candid about the dual citizenship status held by him and his immediate family members.

Circa early November 2001, Applicant was interviewed about his foreign connections by a special agent of the Defense Security Service (DSS). During that interview, Applicant agreed to prepare a statement. In his statement, Applicant disclosed his marriage and frequent travel to Canada to see his spouse who was awaiting approval of her application to immigrate to the U.S. About a week later, on November 6, 2001, Applicant presented the statement he prepared to the agent, who informed him it did not contain sufficient detail about his connections. Upset at the repetitive nature of her questions and not understanding the need for the detail needed, Applicant declined to provide further information about his parents and the property they own in Lebanon, although he did show the agent his passports to verify the foreign travel listed on his SF 86.

Applicant has routinely informed his secretary at work of his foreign travels. Coworkers, including a lieutenant in the U.S. military with daily contact, attest to Applicant's professionalism, his dedication to his work, and his personal integrity. With the support of his chief engineer, Applicant has applied for a patent for ontology translation concepts he developed in conjunction with a project funded by the U.S. military. A speaker of Levantine Arabic, he volunteered his services in June 2003 to evaluate a speech to speech translation system for a Defense Advanced Research Projects Agency project. In addition to his contributions at work, Applicant is involved in his church. He and his spouse are weekly communicants and Sunday school teachers at their Orthodox church. Applicant also assists the pastor with the altar servers.

As of July 2003, Applicant's parents, who reside in Canada, had not been to Lebanon in two years, primarily because of his father's ill health. His parents continue to own their residence in Lebanon, which is vacant, as well as an undeveloped parcel of land of less than two acres. Applicant calls his parents once weekly and visits them in Canada at least annually. Since their marriage in July 2001, Applicant and his spouse have traveled to Canada twice.

Two of Applicant's siblings make their home in the U.S. His sister, who resides in the same state as Applicant, recently

opened a yoga studio. She has visited Lebanon twice in the last 22 years. Applicant's brother has worked as a managing consultant for a large U.S. corporation since February 1997. He has visited Lebanon twice in the last 20 years. Neither sibling has renewed their Lebanese passports and their children speak only English.

Applicant's other siblings make their home in the English-speaking part of Canada. Applicant's brother obtained his license as an air conditioning and refrigeration mechanic in 1997. He currently operates his own company in Ontario engaged in the installation and repair of air conditioning and refrigeration equipment. Applicant's sister has worked as a teacher in the parochial school system in Canada since September 1992. Applicant maintains monthly contact with his siblings.

Applicant's in-laws are permanent residents of Canada with no intent to return to Lebanon. His father-in-law, who had been a farmer in Lebanon prior to his emigration to Canada in 1993, operated an agricultural business in Canada but is not working at present. His mother-in-law works as a cook. Applicant and his spouse maintain weekly telephone contact with her parents and visit them on their trips to Canada, including in May 2003. With the exception of a sister who resides in the U.S., Applicant's spouse's immediate relatives live in Canada.

Applicant has paternal uncles and some cousins, including a cousin who is a nurse serving on active duty in the Lebanese Army, who are resident citizens of Lebanon. Applicant's spouse has some distant cousins in Lebanon. Neither Applicant nor his spouse has frequent or ongoing contact with these relatives. Applicant has had contact with his cousin serving in the foreign military on three or four occasions since 1981, with the most recent being a telephone conversation around the time of Applicant's wedding in July 2001.

## **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, 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 which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. 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 criterion 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 emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

### **Foreign Influence**

E2.A2.1.1. 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

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;

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government.

E2.A2.1.3. Conditions that could mitigate security concerns include:

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;

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

Under Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

#### Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern 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 criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

#### 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 Government has established its case under Guideline B. Under the Foreign Influence guideline, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. Applicant has close ties of affection and obligation to his parents and two siblings, who are dual citizens of Canada and Lebanon and reside in Canada, and to those siblings who reside in the U.S. but have dual citizenship (as does he) with Lebanon and the U.S. Moreover, Applicant married a Lebanese citizen whose immediate family members (parents and a brother) reside in Canada. Clearly, his situation falls within disqualifying conditions 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) and E2.A2.1.2.2. (sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists). Since Applicant has a cousin who is a Lebanese resident citizen serving in the Lebanese Army, E2.A2.1.2.3. (relatives who are connected with any foreign government) must be considered as well.

The security concerns engendered by the foreign citizenship and/or residency of close family members may be mitigated where it can be determined that they are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force him to choose between loyalty to the person(s) involved and the United States (see E2.A2.1.3.1.). As dual citizens of Lebanon as well as of either the U.S. or Canada, Applicant, his spouse, and their immediate family members are subject to the duties or obligations owed to two different countries, which could present competing claims. Any contacts with Lebanon warrant close scrutiny. While Lebanon now operates under a constitutionally established central government and has not been conspicuously hostile to U.S. interests, the country's overall human rights record continues to be poor, and U.S. citizens who travel to the region are advised to exercise caution. The U.S. State Department reports that Hizballah, a Lebanese Shi'a group designated by the U.S. as a terrorist organization, has not been disarmed and maintains a strong presence in portions of Lebanon. In areas not strictly under the Lebanese Government's control, Hizballah, Syrian Government influence, and outlawed Palestinian groups operate to undermine legitimate authority.<sup>(3)</sup>

Yet, after evaluating the current strength of Applicant's and his family members' ties to Lebanon, there is little concern presented by the Lebanese citizenship of Applicant, his spouse and their immediate family members, by his parents' ownership of property in Lebanon, or by a cousin's service in the Lebanese military. There is no evidence that any of Applicant's or his spouse's immediate or extended relatives have ever been subject to duress, influence, or compromise by any agent or intelligence member of the Lebanese Government. His father served in the military more than 30 years ago and there is no evidence of recent contact with Lebanese military or civilian authorities. Applicant's cousin is a nurse specialist in the Lebanese Army, and is not involved in intelligence or security. As reflected in the infrequent nature of their contact (three or four contacts since 1981), Applicant is not especially close to this cousin in any event (see E2.A2.1.3.3.). Having chosen to emigrate from Lebanon to North America where they would be able to live as Orthodox Christians free of institutional discrimination, Applicant's immediate family members have significantly reduced their vulnerability to Lebanese influence. While Applicant's in-laws and his spouse are citizens only of Lebanon, they are not maintaining their Lebanese citizenship to protect any financial or business interest in Lebanon. Applicant's spouse testified credibly she intends to acquire U.S. citizenship as soon as she is eligible. Although Applicant's parents still own the home in Lebanon where Applicant grew up, they voluntarily acquired Canadian citizenship in 1994, which speaks volumes as to where their allegiance lies. Trips to Lebanon, of short duration in the past to see relatives, are not likely in the future by Applicant or his parents, given his father's ill health.

The more significant foreign ties at this point are clearly to Canada, where Applicant's parents, in-laws, two of his four siblings, and his brother-in-law have chosen to live out their retirements, or in the case of the siblings, pursue their careers and raise their children. In tacit recognition that even countries with the best of relations may have dissimilar or even incompatible interests, the Foreign Influence guideline is ostensibly neutral as to the nature of the subject foreign country. Yet, the guideline should not be construed to ignore the geopolitical aims and policies to the particular foreign regime involved. Canada has been historically allied with the U.S. and the two nations share a common respect for democratic institutions. Canada is not known to inappropriately pressure its citizens to obtain either classified information, or unclassified economic and proprietary data. Moreover, none of the family members residing in Canada are in positions of authority or influence in the Canadian Government. By all accounts of record, they are law-abiding, productive members of Canadian society. Applicant's mother-in-law works as a cook; Applicant's sister is a parochial school teacher; his brother owns his own business installing and repairing air conditioners and refrigerators.

Applicant has been unabashedly candid about the close feelings he has for his family members. There are no allegations of foreign preference, but Applicant's respective ties and attitudes toward the U.S. are relevant in assessing whether he could be forced to choose between his close family members and his obligations to the U.S. in the event (albeit unlikely) of any undue foreign influence being placed on a family member. Applicant left Lebanon at the age of eighteen. On completing his studies in the U.S., he could have moved to Canada as his parents did. Instead, he elected to remain in the U.S. and become a U.S. citizen. He took the oath of naturalization seriously, and acquired a U.S. passport which he has since used exclusively for his foreign travel, even during a time when his Lebanese passport was still valid. Following his marriage, he complied with U.S. law and ensured his spouse had the appropriate visa to enter the U.S. from Canada, even though it meant a long separation as a newlywed. Applicant has shown to possess personal integrity, his reluctance to provide requested detail to the DSS agent an aberration adequately explained by his failure to appreciate the need for great detail and the post September 11, 2001 climate where some individuals with benign foreign

ties felt themselves unfairly targeted. Those who know him best, from former and present coworkers to the pastor at his church, vouch for his good character and trustworthiness. Any efforts at undue influence or pressure on Applicant's family members are likely to be met with resistance and notification by Applicant to U.S. authorities of the improper contacts or threats. After consideration of all the facts and circumstances, favorable findings are warranted with respect to subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., and 1.l. of the SOR.

### **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 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

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: 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.

**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. The U.S. Department of State reports that the Lebanese Constitution provides for freedom of religion, but that discrimination based on religion is built into the system of government. The "National Pact" of 1943 stipulates that the President, the Prime Minister, and the Speaker of Parliament be a Maronite Christian, a Sunni Muslim, and a Shi'a Muslim, respectively. The 1989 Taif Accord ending the country's 15-year civil war reaffirmed this, but resulted in increased uslim representation in Parliament and reduced the power of the Maronite President. *See Country Reports on Human Rights Practices-2002.*

3. See the State Department's *Country Report on Human Rights Practices-2002* and its *Consular Information Sheet* for

Lebanon issued May 31, 2002.