

DATE: November 25, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11396

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's immediate family lives in a foreign country. He is a United States citizen, but claims dual citizenship with Lebanon, and he possesses a Lebanese Travel Document in addition to his United States passport. Applicant uses his Lebanese Travel Document to travel to the Middle East, and his United States passport to travel elsewhere. He wants his Lebanese Travel Document because he might inherit his parents' property in Lebanon. Applicant has not mitigated the security concerns under Guidelines B and C. Clearance is denied.

**STATEMENT OF THE CASE**

On July 2, 2003, 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 Guidelines B(Foreign Influence) and C (Foreign Preference) 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

Applicant submitted a signed and sworn statement, dated August 6, 2003. He admitted the allegations contained in the SOR in Paragraphs 1 and 2. Applicant requested his case be decided on the written record in lieu of a hearing.

On September 29, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a response by the due date of November 7, 2003. The case was assigned to me on November 19, 2003.

**FINDINGS OF FACT**

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

Applicant is 24 years old. He was born in the United States when his father was attending school here. Applicant is a citizen based on his birth here. He returned to the Middle East with his parents while a minor, and lived in Lebanon and the United Arab Emirates with them. His parents and brother are Palestinians who live in the United Arab Emirates, and who formerly resided in Lebanon after leaving Israel where they were born. Lebanon gave his parents refugee status, and issued Lebanese Travel Documents, which allow them to enter and leave Lebanon. These documents are similar to a passport issued by a foreign government. (Item 5 at 1)

Applicant returned to the United States from the United Arab Emirates in 1997 to attend college. He graduated in 2000. He was then unemployed until obtaining work with a defense contractor. He completed his security clearance application (SCA) on January 17, 2001. (Item 5 at 1 and 10; Item 6 at 1 and 2)

Applicant has refugee status in Lebanon based on his parents' status. Applicant has both a United States passport and a Lebanese Travel Document, and claims dual United States and Lebanese citizenship on his SCA. Applicant uses his Lebanese Travel Document when traveling to the Middle East. Applicant's parents own a condominium and land in Lebanon which Applicant could inherit one day. Applicant also has some rights and possible compensations as a Palestinian refugee (Item 5 at 2; Item 6 at 2 to 6)

Applicant's parents live in the United Arab Emirates. Applicant's brother lives in the United Arab Emirates, and will be coming to the United States to attend college. (Item 6 at 1 to 3)

Applicant traveled to the United Arab Emirates from 1997 to 2000 annually, staying there from one to three months on each trip. Applicant also traveled to Belgium to visit relatives living there when he was growing up between 1980 and 1993. Applicant communicates by telephone with relatives and friends in Europe and the Middle East frequently. (Item 5 at 6; Item 6 at 4)

### 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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

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. of 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive Para E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive Para. E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec . Or. 12968 Section 3.1(b).

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:

- (1) The exercise of dual citizenship. Directive ¶ E2.A3.1.2.1.
- (2) Possession and/or use of a foreign passport. Directive ¶ E2.A3.1.2.2.
- (4) Accepting educational or other benefits, such as retirement or social welfare, from a foreign country.

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

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

#### **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:

(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. Directive, ¶ E2.A2.1.2.1.

(8) A substantial financial interest in a country that could make the individual vulnerable to foreign influence. Directive, ¶ E2.A2.1.2.8.

Conditions that could mitigate security concerns include:

None

Applicable also is the Memorandum of August 16, 2000, entitled "Guidance to 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". This memorandum guidance states that

possession and/or use of a foreign passport may be a disqualifying condition. . . 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 raised 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.

## **CONCLUSIONS**

Under Guideline C, I conclude Applicant has expressed by his actions a preference for a foreign country over the United States. Applicant claimed dual citizenship with Lebanon on his SCA. Disqualifying Condition (DC) 1 applies. He possesses and uses a Lebanese Travel Document, which is tantamount to a passport, when he is entering or leaving Lebanon, and traveling around the Middle East. DC 2 applies. Also, Applicant claims refugee status in Lebanon which status enables him to obtain the Lebanese Travel Document, which he uses for his travel in the Middle East instead of his United States passport. That status is a benefit conferred by a foreign government. DC 4 applies. Finally, the "Money Memo" applies and makes it clear that because Applicant has not surrendered his Lebanese Travel Document, he cannot be approved for a security clearance.

There are no Mitigating Conditions applicable in this case. Therefore, I find against Applicant on this guideline.

Next, the Government alleges Guideline B concerns. They are raised because Applicant has his immediate family members living in the United Arab Emirates. They have lived there for a number of years. DC 1 applies. Applicant's parents own a condominium and some land in Lebanon. Applicant is an heir to those properties, which constitute a substantial financial interest in Lebanon. Applicant's own statements show he wants to maintain his refugee status, and believes he has some rights or compensations as a Palestinian refugee if there is a settlement of the present controversy between the Palestinian people and Israel. Again, Applicant has a prospective substantial interest in a foreign country. DC 8 applies.

There are no MC applicable to this case. Therefore, I find against Applicant on this guideline.

## **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.: 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 a security clearance to Applicant. Clearance is denied.

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Philip S. Howe

Administrative Judge