DATE: June 15, 2004

In re:

SSN: -----------

Applicant for Security Clearance

ISCR Case No. 02-12840

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Ray HeLal, Esq.

SYNOPSIS

Applicant failed to mitigate security concerns raised by his sister and in-laws being residents of Lebanon and his brother being a citizen resident of Israel. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 10 September 2003, DOHA issued a Statement of Reasons[1] (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in a writing notarized on 24 October 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 12 arch 2004. On 6 April 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 15 April 2004.

FINDINGS OF FACT

Applicant is a 50-year-old principal systems engineer for a defense contractor. Ex. 1 at 1; Tr. 43. He has the confidence of his supervisors who believe he is a first-rate worker, thorough, and dedicated to the mission. They believe he does not represent a security threat.

Applicant's mother was born in the U.S. of Lebanese-American parents. She met Applicant's father, a citizen resident of Lebanon, in Lebanon and married him. Tr. 28. Applicant was born in the U.S., but moved to Lebanon with his mother when he was five so he could get a Druze education. They lived in the small village of his father's birth, in the hills 15 miles from Beirut. Applicant remained in Lebanon for nine years. Ex. D at 2. After he graduated from high school in the U.S., Applicant joined the U.S. Air Force. He served for 13 years and held a top secret SCI[2] clearance for much of that period. Applicant traveled to Lebanon in 1996, twice in 1997 and 1998, and once in 2000. Tr. 47.

Applicant's mother and father divorced; his mother remained in the U.S. and his father returned to Lebanon. In 1997, Applicant's father died. Prior to his death, Applicant had returned to visit him. During the visit, Applicant became reacquainted with a woman he had met when they were both children in Lebanon. They were married in 1998 and she became a U.S. citizen in 2003. Tr. 29. Her parents are citizen residents of Lebanon. Tr. 22.

Applicant's oldest sister was an attorney in the U.S. When she visited her dying father in Lebanon, she met his neighbor. She closed her practice in the U.S., married the neighbor, and is now living in Lebanon. Tr. 27. Her husband is a poet who lives off funds from his parents olive oil business. Tr. 42.

Applicant's youngest sister was born in Lebanon, but has not been back since the family departed when she was about two years old. She is now married to a native-born U.S. citizen who is not of Lebanese heritage. Tr. 28.

Applicant's brother was an artist in the U.S., but moved to Israel, converted to Judaism, and married an Israeli woman. They have five children and he is a staunch Zionist. Applicant has not had direct contact with his brother for about six years. He gets information about him from his mother. Tr. 26-27; Answer.

After his father's death, Applicant was to inherit the family home in the small village town in Lebanon. He estimates the house is over 125 years old and worth $20,000. He found a buyer, but there is some question as to whether a non-Lebanese citizen may own or transfer property in Lebanon. Tr. 24. Applicant had a small bank account in Lebanon to defray some of the expenses for caring for his dying father. The account has been closed. Tr. 29; Answer.

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 judgment, 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* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant mother-in-law and father-in-law (¶ 1.a.) and his sister (¶ 1.c.) are citizen residents of Lebanon, his brother is a citizen resident of Israel (¶ 1.b.), and he owns property (¶ 1.d.) and maintains a bank account (¶ 1.e.) in Lebanon. A security risk may exist when an applicant's immediate family, or other person to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

Applicant asserts he is a loyal U.S. citizen who would not betray the U.S. The Government has not alleged, and the evidence does not show, Applicant is anything but a loyal U.S. citizen. However, the issue is not his loyalty, but whether he is vulnerable to foreign influence that could result in the compromise of classified information.

In evaluating an applicant's foreign associations, it is appropriate to consider the significance of the applicant's spouse's ties to foreign countries. ISCR Case No. 01-02452 at 8 (App. Bd. Nov. 21, 2002). There is a rebuttable presumption that an applicant has ties of affection for, or obligation to, his spouse's immediate family members. ISCR Case No. 01-26893, 2002 DOHA LEXIS 505 at *8 (App. Bd. Feb. 20, 2002).

The Government established by substantial evidence and Applicant's admissions each of the allegations contained in the SOR. Applicant has immediate family members-his sister and brother-who are residents or citizens of a foreign country. DC E2.A2.1.2.1. Applicant failed to rebut the presumption that he has ties of obligation, through his wife, to his in-laws, who are citizen residents of Lebanon. DC E2.A2.1.2.1.

An applicant may mitigate foreign influence security concerns if he shows his foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associate and loyalty to the U.S. MC E2.A2.1.3.1. In analyzing whether a foreign associate is in a position of vulnerability, it is necessary to assess the nature of the foreign countries involved. Lebanon is a country that has been beset by civil war and turmoil since at least 1975. Military forces of Syria, included on the Department of State's list of State sponsors of terrorism, [3] are still present in Lebanon. App. Ex. I. In December 2003, the U.S. Department of State issued a travel warning for Lebanon, expressing the ongoing safety and security concerns for U.S. citizens in Lebanon.[4] Americans were the targets of numerous terrorist attacks in Lebanon. The perpetrators of many of these attacks are still present and retain the ability to act. Israel is known to target for collection U.S. classified information. After considering all the evidence, I conclude Applicant failed to mitigate foreign influence security concerns caused by his in-laws, brother, and sister being citizens or residents of foreign countries.

An applicant with a substantial financial interest in a country may be vulnerable to foreign influence. Applicant has a claim to a house worth roughly $20,000. I do not believe in this case that is a "substantial financial interest." It is not disqualifying under DC E2.A2.1.2.8. But an administrative judge is not permitted to review facts in isolation. ISCR Case No. 01-12452 at 4 (Jan. 27, 2003). Under the circumstances, I conclude owning the house in Lebanon still has significance in the evaluation of Applicant's case. Applicant demonstrated that he no longer has a bank account in Lebanon and when he did, it was a very small amount for the care of his dying father. Therefore, I find for Applicant on SOR ¶¶ 1.d. and 1.e.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

<u>DECISION</u>

In light of all of 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. Clearance is denied.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

2. Sensitive compartmented information.

3. http://travel.state.gov//syria.html. Although I was not asked to take administrative or official notice, these facts are known to this agency through its cumulative expertise in deciding security-clearances cases involving foreign influence or foreign preference. *See* ISCR Case No. 9900452 at 4 (App. Bd. Mar. 21, 2000); Gary J. Edles and Jerome Nelson, *Federal Regulatory Process: Agency Practices and Procedures* § 6.9 (1995).

4. The travel warning was reissued in May 2004. http://travel.state.gov/lebanon_warning.html. Although I was not asked to take administrative or official notice, these facts are known to this agency through its cumulative expertise in deciding security-clearances cases involving foreign influence or foreign preference. *See* ISCR Case No. 9900452 at 4 (App. Bd. Mar. 21, 2000); Gary J. Edles and Jerome Nelson, *Federal Regulatory Process: Agency Practices and Procedures* § 6.9 (1995).