

DATE: November 28, 2003

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-20006

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a naturalized citizen of the US who has immediate family members who are citizens of Lebanon and reside there (save for one of Applicant's sisters who resides in Canada), mitigates any potential risk to undo foreign influence concerns under Guideline B. Neither Applicant's parents nor siblings have ever worked for the Lebanon Government or other state or non-state organizations operating in the region. And Applicant's father, while a veteran of Lebanon's military, has been retired for over 15 years and maintains no contact with the military or other state organizations. Lebanon, while a country reported to be relatively weak with a tarnished human rights record, retains relatively peaceful inter-state relations with the US and has no history of targeting relatives of US citizens holding security clearances (directly or indirectly) to elicit classified information from the holder. Any security risks associated with Applicant's parents and siblings holding citizenship and residence in Lebanon are manageable ones that are compatible with Applicant's holding a security clearance. Clearance is granted.

STATEMENT OF CASE

On April 30, 2003, 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, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DORA 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, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on May 7, 2003. and requested a hearing. The case was assigned to this Administrative Judge on June 5, 2003, and was scheduled for hearing. A hearing was convened on August 22, 2003, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke

Applicant's security clearance. At hearing, the Government's case consisted of one exhibit and four State Department publications re: Lebanon, for which official notice was asked for and received. Applicant relied on one witness (himself) and eight exhibits. The transcript (R.T.) of the proceedings was received on

September 2, 2003.

PROCEDURAL ISSUES

Before the close of the hearing, Department Counsel asked to keep the record open to supplement the record with Applicant's entire investigation file. There being no objections, and good cause being demonstrated, Department Counsel was permitted an additional seven days to supplement the record with Applicant's complete investigation file. Within the time permitted, Department Counsel provided Applicant's complete investigation file, which was accepted as Government's exhibit 2.

STATEMENT OF FACTS

Applicant is a 43-year-old engineer for a defense contractor who seeks a security clearance.

Summary of Allegations and Responses

Under Guideline B, Applicant is alleged to have (a) a mother, father (a retired infantry soldier in the Lebanese Army) and three sisters who are citizens and residents of Lebanon, (b) a sister who is a citizen of Lebanon and resident of Canada, (c) once monthly telephonic communications with his family and written contact through Christmas cards, and (d) a record of travel to Lebanon in June 1998 and June 2001.

For his response to the SOR, Applicant admitted each of the allegations of the SOR. He

explained that he applied for permanent residency for his parents in the US (granted in February 1993), but that his parents (who still hope to come and reside in the US) were precluded from permanently emigrating to the US for medical reasons. He explained his sisters would like to relocate to the US, too, but have not to date. He claimed his family members residing in Lebanon are Christian and live in the Christian part of Lebanon: they are pro western and are not subject to duress. He claimed his father (border line illiterate) has been retired from the Lebanese military for over 15 years and has no ties to the Army or any government organization. He claimed his sister residing in Canada is a naturalized Canadian citizen. And he claimed his travels to Lebanon in 1998 and 2001 were undertaken for the purpose of trying to bring his parents back to the US.

Relevant and Material Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Background history

Born and raised in Lebanon, Applicant emigrated to the US in 1967 to escape Lebanon's civil war. While in the US, he put himself through college and obtained a BS degree in engineering in 1983. In 1985, he became a naturalized US citizen and was issued a US passport, which he uses exclusively when he travels abroad.

Applicant married an American citizen in 1981, and he has three children by his American wife, two of whom attend a prestigious university in his home state (see ex. B). Applicant and his wife own their own home, vote exclusively in the US, and own only US investments (see ex. C). He has no financial interests in Lebanon. He has worked for his current defense contractor since 1988 and has been continuously employed in the aerospace industry for 25 years, regularly

progressing to higher levels of responsibility.

Applicant's parents have long wanted to emigrate to the US. In 1992 they came to the US and with Applicant's help, applied for permanent resident approvals and work permits (see exs. E and F). His parents returned home to retrieve their belongings with every intention of emigrating to the US to establish permanent residency. However, the father became ill when he returned to Lebanon. Soon after his return, he was diagnosed with Glaucoma and had to undergo surgery on both eyes over a period of time which delayed their return (see ex. G). His health has been in a continual state of decline ever since: ulcers operation, Diabetes, and heart operations comprise the cycle of medical setbacks. In both 1998 and 2001, Applicant made trips to Lebanon to check on their health status and further encourage their relocation to the US. In each case, he elicited leave from his employer to make the trips to see his family. Applicant continues to maintain monthly telephone contact with his parents and exchanges Christmas cards with them. While he cannot traveling again to Lebanon to see his parents, he assures such a trip would only be to pick up his parents (see R.T., at 43, 53). His assurances appear sincere and are accepted.

Applicant has four sisters: three who are citizens and residents of Lebanon, and a fourth who resides in Canada (naturalized as a Canadian citizen in 1995). All of his family members are Christian by their religious beliefs, who reside in the Christian section of Lebanon, except for the sister who resides in Canada.

None of Applicant's family members are or have been agents or employees of the Lebanese Government. Except for Applicant's father who retired from the Lebanese Army 15 years ago, none of his immediate or extended family members have any Government relationships (past or present) with any agency or instrumentality of the Lebanese Government (see R.T., at 42-43). To the best of Applicant's knowledge, none of Applicant's immediate or extended family members are now, or ever have been, subject to duress, influence or compromise by any agent or intelligence member of the Lebanese Government. Applicant knows of no Syrian threat to any of his family members residing in the Christian sector of Lebanon; they present no documented threat that could be the basis of there being targeted by Syrian troops or agents. And Applicant considers the Hizballah terrorist faction that occupies the eastern quadrant of Beirut to be too far away from the Christian sector where his family members reside to pose any material threat to them. But were any of his family members to be endangered by Lebanese Government officials or other groups operating in Lebanon, he would notify his company and appropriate US Government officials of any threat imposed on them (see R.T., at 48). Applicant's credibility is excellent, and his assurances are accepted.

Coverage of Lebanon's political and legal status and posed threats

Lebanon itself went through a turbulent period of Civil War between 1975 and 1990. During Lebanon's civil conflict, Americans were the targets of numerous terrorist attacks within the country. While there have been less attacks on US citizens in recent years, the potential for such attacks by terrorists groups operating within the country still exists. The country continues to face stiff economic challenges as it emerges from its long civil war and is considered far from being either economically stable or able to protect either its own citizens or US citizens traveling to the region.

Since the institution of a power sharing arrangement in 1991 in the aftermath of the conclusion of its civil conflict, Lebanon has operated under a constitutionally established central government. Nonetheless, Lebanon remains a country that is subject to close security review by the US State Department. While the US does maintain diplomatic relations with Lebanon, US citizens who travel to the region are advised to exercise caution, particularly when traveling in parts of the southern suburbs of Beirut and portions of the Bekaa Valley and south Lebanon (see Consular Information Sheet of US State Department, May 2002). The State Department emphasizes that Hizballah (a Lebanese Shi'a group designated by the US as a terrorist organization) has not been disarmed and maintains a strong presence in these areas. Palestinian groups hostile to both the Lebanese Government and US citizens generally operate largely autonomously in Lebanese refugee camps throughout the country and pose heavy risks to both US citizens and Palestinian camps. Still another terrorist group, Asbat al-Ansar (with reported links to Al-Qaida) is known to have targeted US and Lebanese Government interests. To add to this documented security instability in Lebanon, Syrian troops (some 20,000 of them) roam freely in the country under the considerable political influence of Syria over Lebanon's governmental and security forces (see US Department of State publication, 2002).

Structurally, Lebanon today is a parliamentary republic, with a constitution dating from 1926. Based on the unwritten

"National Pact of 1943," the President is a Maronite Christian, the Prime Minister a Sunni Muslim, and the Speaker of the Chamber of Deputies a Shi'a Muslim (US Department of State publication, 2002). Its legal system consists of a mixture of Ottoman law, canon law, Napoleonic law, and civil law. Its judicial system provides for no judicial review of legislative acts (as is the norm in the US), and the country has never accepted compulsory International Court of Justice jurisdiction.

Despite progress between the governments of Syria and Lebanon in 1991 to jointly improve security between their armed forces operating in Lebanon, little progress has been made to reduce the Syrian presence in Lebanon. As a result, both armed troops and military intelligence personnel from Syria continue to conduct their activities in Lebanon relatively independently of Lebanese forces (see US Department of State publication, 2002).

Lebanon's overall human rights record continues to be poor: marked by reported incidents of excessive force and torture against both Lebanese citizens and foreigners by Lebanese security and intelligence personnel, arbitrary arrest and detention of persons critical of the government policies, flawed elections, and Syrian influence. Even Lebanon's new Code of Criminal Procedure (enacted in 2001) has not been able to curb lengthy pre-trial detention of persons critical of the Government's policies, stem continued surveillance of political activities that could pose a potential threat to the Government, or solve reports of politically motivated disappearances (see US Department of State publication, 2002).

Despite all of the chronicled weaknesses in Lebanon's institutions, the Government still functions as a democratic state under a constitution that retains a judicial system independent in principle, even if it is subject to political pressure and reported abuses in its insurance of fair trials and the protection of constitutionally protected liberties like freedom of the press, religion and association. Not known to be an active supporter of the US role in brokering peace between Israel and the Palestinian people, or to advance US security interests in the region generally, Lebanon's government has not been conspicuously hostile to the US' vital interests in the region. Its government participated in the convened Madrid peace talks with Israel that begun in 1991, and it remains committed of record to the goal of comprehensive Middle East peace based on UN Security Council resolutions (*see* US Department of State publication, 2002).

Special cautions remain in place, nonetheless, for US citizens like Applicant who may wish to travel to Lebanon in the future to see his family. Lebanon remains in a state of war with Israel, and for a considerable period (1973-2000), Israeli troops occupied much of south Lebanon. US citizens (including naturalized ones who may still be considered Lebanese by custom and border officials operating in Lebanon) remain subject to Lebanese laws and regulations when inside the country, which can be much more severe in their ingress and egress requirements and consequences for determined violations than in the US for similar offenses. Travelers, for instance, whose passports contain Israeli stamps or visas, and who also hold Lebanese or Arab national status, could be subject to arrest and punishment (*see* US Department of State publication, 2002).

Applicant's professional credits

Applicant is highly regarded by his supervisor and colleagues who describe him as a person possessed with outstanding judgment and integrity in his professional and personal affairs. He regularly receives solid performance evaluations and promotions from his employer (see ex. D). Applicant is credited with developing important flight system designs and brings to his current employer an outstanding array of experience as an aircraft test/design engineer with other aerospace contractors.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued, or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factor are pertinent herein:

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are 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.

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 of, or resident or present in, a foreign country.

DC 6: Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

Mitigating Conditions:

MC 1: A determination that the immediate family members, co-habitant or associate 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 persons involved and the United States.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of potential risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a naturalized US citizen who, after being born and raised in Lebanon emigrated to the US in 1967, became a naturalized US citizen in 1985. Government urges security concerns over the risk of Applicant's parents and siblings (all citizens of Lebanon) who reside in Lebanon (save for one sister who resides in Canada) might be subject to undue pressure and foreign influence by either Lebanese authorities, Syrian troops and/or agents operating in Lebanon, or terrorist organizations who operate freely in Lebanon.

Because Applicant's parents and three sisters reside in Lebanon, they present potential security risks covered by

Disqualifying Condition (DC) 1 (immediate family members in a foreign country) of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these family members in Lebanon pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise classified information under Applicant's possession and/or control. And because of the possibilities that Applicant might choose to travel to Lebanon in the future on his US passport to accompany his parents back to the US to pursue permanent residency, concerns exist that Applicant himself could expose himself to risks of coercion or foreign influence. Because of this risk (no matter how remote it might be), DC 6 (conduct that may make an individual vulnerable to coercion or foreign influence) has some potential applicability as well.

From what is known from Applicant's own testimony, none of Applicant's immediate family residing in Lebanon have current working/non-working relationships with the Lebanese Government. Nor have they (past or present) been involved or connected in any way with any foreign states organizations operating in Lebanon with or without the Lebanese Government's express or tacit approval. Neither Applicant's parents nor his siblings have any history to date of being subjected to any coercion or influence by either Lebanese Government authorities or foreign states or organizations operating in the region. Based on his own assurances that he would report any known pressures on his family members to the proper authorities, and his seasoned track record for seeking permission from his company to travel to Lebanon to see his parents, safe predictions can be made of his reporting any future pressure or influence problems involving foreign family members in the future.

Still, before the presence of Applicant's immediate family members in Lebanon can be disposed of as manageable risks, the state of Lebanon's laws and institutions governing internal security and intelligence gathering matters, must be assessed when considering whether the continuing citizenship and residency of Applicant's immediate family members in Lebanon make the risks of duress or compromise to his family unmanageable ones from the standpoint of protecting US classified information Applicant might be eligible to access.

Taking Applicant's explanations about his parents, siblings (inclusive of his sister who currently resides in Canada) at face value, any risk of pressure or undue foreign influence on Applicant and/or his immediate family would appear to be insubstantial and clearly manageable. Lebanon, despite its unstable political environment (marked by the presence of Syrian troops and terrorist organizations operating within its borders) and a checkered human rights record, is not a country considered hostile to US interests by the US State Department. Moreover, nothing in the backgrounds of Applicant's parents has changed since they visited the US in 1992 to warrant the attribution of increased security risks to their current status in Lebanon. This factor alone distinguishes Applicant's situation from the one charted by DOHA's Appeal Board in ISCR Case No. 02-26826 (November 12, 2003).

Likewise, any potential risks associated with a possible future Applicant trip to Lebanon to see his parents and accompany them back to the US to seek permanent residency status are manageable ones. Based on his prior experiences in traveling to Lebanon and personal knowledge of the country, Applicant can be expected to take whatever precautionary steps are required to minimize dangers to himself and his family, consistent with US State Department warnings to Americans planning trips to the country.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in supplied materials and information available under the Adjudication Desk reference and US State Department publications (as here).

So, under these furnished information guidelines covering Lebanon, Lebanon can best be characterized as a functioning democracy not in a hostile relationship with the US (even if a weak one subject to intrusions from its neighbors, both state and non-state), who is not currently known to pose unacceptable hostage risks. Whatever potential security risks arise as the result of Applicant's having immediate family of demonstrated affection in Lebanon, they are by every reasonable measure mitigated. Applicant's situation is in marked contrast to a situation extant in a country with interests inimical to those of the US. While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the nature of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. Lebanon, while reported to be an unstable democracy, is still a country with no

known recent state history of hostage taking or disposition for exerting undue influence against Lebanese relatives of US citizens to obtain either classified information, or unclassified economic and proprietary data.

Because of the presence of Applicant's immediate and extended family members in Lebanon has not been, and does not expect to be. exploited by the Lebanon Government to facilitate the compromise of classified information available to Applicant. any potential risk of a hostage situation or undue foreign influence brought in the hopes of eliciting classified information out of Applicant (either directly or indirectly) becomes an acceptable one, for which the mitigation benefits of M 1 (presence of immediate family in host country poses no unacceptable security risk) of the Adjudicative Guidelines are fully available to Applicant.

Taking into account all of the security considerations that might affect or impact Applicant's relations with his immediate family members of Lebanese citizenship and residence (save for his sister residing in Canada), any potential security concerns attributable to Applicant's family members in Lebanon/Canada are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial relationships in Lebanon and Canada. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in §2.2 of the Adjudicative Process of Enclosure2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, I make the following separate FORMAL FINDINGS with respect to Applicant's eligibility for a security clearance.

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge