

DATE: November 29, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-20365

## **REMAND DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

#### **FOR APPLICANT**

James L. Banks, Jr., Esq.

### **SYNOPSIS**

Applicant is a 53-year-old engineer employed by a defense contractor. He was born in Lebanon and continues to hold dual citizenship consistent with the policy that regards anyone of Lebanese descent as always a citizen of their country. At the advice of the Department of State because of terrorist attacks against U.S. citizens, he used his Lebanese passport to travel there on several occasions ending in 1999. He owns a small parcel of land in Lebanon which is not of sufficient value to cause him to be under foreign influence from that country. Clearance is granted.

### **STATEMENT OF THE CASE**

On August 18, 2003, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, 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 which 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated September 11, 2003, Applicant responded to the SOR allegations, and requested a hearing. The case was assigned to me on November 14, 2003. A hearing was held on February 4, 2004. The government offered six exhibits at the hearing and the Applicant one. Three government exhibits (1, 2, and 3) and Applicant's exhibit were accepted into evidence. The other three exhibits offered by the government (4, 5, and 6) were not admitted as exhibits but official notice was taken of them. The transcript was received on February 10, 2004.

I issued a decision on March 22, 2004, granting a security clearance to Applicant. Department Counsel appealed the decision and on November 2, 2004, the Appeal Board remanded the matter to me and ordered that I provide a reasonable opportunity for Department Counsel to resubmit copies of what had been marked as Exhibits 4, 5, and 6 of which administrative notice had been taken but were not included in the record; issue a new decision; state whether I

considered those exhibits in deciding the case; and clarify the identity of the May 2003 document cited in the opinion. Department Counsel resubmitted the three documents and they are now in the record. The May 2003 document cited is Exhibit 5 dated May 5, 2003. Government Exhibits 4 and 6 were considered in reaching my original decision and more fully explicated in this decision.

### **FINDINGS OF FACT**

Applicant has admitted some of the specific factual allegations in the SOR and denied others. Those admissions are incorporated herein as findings of fact.

Applicant is a 53-year-old engineer employed by a defense contractor with an annual salary of approximately \$110,000.00. He holds a doctoral degree from a major U.S. university. He was born in Lebanon and continues to hold dual citizenship with that country. The government of Lebanon regards anyone of Lebanese descent as always a citizen of their country. He is married to a native born U.S. citizen whom he met and married in Iran where they were both studying in 1965. His wife also holds dual citizenship with Lebanon that she applied for in 1990. They have three children all of whom are U.S. citizens.

Applicant emigrated to the U.S. in 1969 and became a U.S. citizen in 1973 at which time his Lebanese passport was returned to him by U.S. immigration authorities. Between 1973 and 1999 Applicant used his Lebanese passport a number of times when traveling to Lebanon to visit his family. On every occasion he advised his employer of the trip and was debriefed after his return. He had been advised by the Department of State that use of the Lebanese passport was desirable since there was a civil war extant much of the time and American citizens were being targeted. (Exh. 5 Department of State Travel Warning, May 6, 2003 updated November 10, 2003). It was considered that there was less likelihood of problems if one traveled with a passport of Lebanon. He did not travel there between 1976 and 1980 when the civil war was at its peak.

His last trip to Lebanon when he used his Lebanese passport was in 1999 to attend a wedding of a relative. During that trip the Applicant and his wife accompanied his son by auto to Damascus on a day trip. His son was working in the Middle East for the American Friends Service Committee had an appointment with the U.S. Ambassador to Syria (Exh. A). Official notice was taken of the document Overview of State-Sponsored Terrorism (Exh. 6) that discusses both Syria and Lebanon. Nothing in the conduct of Applicant would indicate that his activities on that trip should give rise to any credible suspicions that he was involved in any activities described in that government document. Applicant's last trip to Lebanon was before the recent outbreak of the violence (Exhibit 5). His visit to Syria was only for a few hours under benign circumstances.

Applicant's Lebanese passport expired in 2001 and he used his U.S. passport to travel to Lebanon in 2002, his only trip since 2001. He has not applied for a new Lebanese passport and does not intend to do so as he has no need for one. There are fewer problems for Americans traveling there now and his family needs for travel are non-existent.

Applicant worked as an engineer in Lebanon before his emigration to the U.S. and maintains some professional and personal contacts with his former colleagues. Since his emigration he has had a varied career and his profession took him to Saudi Arabia where he worked between 1980 and 1987 for a U.S. contractor working on pollution control projects. His present work for his employer involves environmental cleanup for the Environmental Protection Agency, the Department of Energy, Department of State, and Department of Defense.

Applicant's youngest son was told to report for duty in the Lebanese army and the family successfully resisted the effort of the government of Lebanon and he was declared exempt (Exh. 4, p. 2).

Applicant owns approximately 24 acres of land in his family village in the hills north of Beirut. A relative has valued it at approximately \$100,000.00 but that is only an estimate and there is no market since access is limited to foot travel. It is not arable and consists of several smaller parcels that Applicant purchased from other relatives who needed funds. The land was passed down from their great-grandfather to these extended relatives. Applicant intends to sell it when and if there is a market for it.

The closest relative of Applicant who still live in Lebanon is a nephew. Some cousins still live in Lebanon. Applicant

helped get his parents, a brother, and two nephews out of Lebanon and to the U.S.

## 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The Applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the Applicant's clearance. "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, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

The applicable Guidelines cited in the SOR concern the following Disqualifying Conditions (DC):

### 1. Foreign Preference, Guideline C:

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.

Conditions that could raise a security concern and may be disqualifying include the exercise of dual citizenship (E2.A3.1.2.1), or possession and/or use of a foreign passport. (E2.A3.1.2.2.)

An applicable mitigating condition is that the individual has expressed a willingness to renounce dual citizenship. (E2.A3.1.3.4.)

### 2. Foreign Influence, Guideline B:

A security risk may exist when an individual has a substantial financial interest in a country that could make an individual potentially vulnerable to coercion, exploitation, or pressure. (E2.A2.1.2.8.)

An applicable mitigating condition is that the foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. (E2.A2.1.3.5.)

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the following with respect to all allegations set forth in the SOR.

Based on the evidence of record, including Applicant's admissions, the Government has stated reasons to deny him a security clearance because of foreign influence and foreign preference. Having established such reasons, the Applicant has the burden to establish security suitability through evidence that refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-

0424 (App. Bd. Feb. 8, 2001)

Applicant has successfully moved all close relatives out of Lebanon. Although he used the foreign passport on several occasions before 1999, he did so on the advice of the Department of State because of the targeting of U.S. citizens by terrorist groups. His passport is expired and he has no interest in obtaining a new one showing his preference for U.S. citizenship.

Mitigating Condition (MC) 4 is applicable as to Guideline C in that Applicant is willing to renounce his dual citizenship, but does not know how to do so in view of the policy of Lebanon on dual citizenship.

Although Applicant has a financial interest in Lebanon through the acquisition of the interests of several family members of the family farm, it is a of minimal concern to him in view of his income and long term commitment to the U.S. over the past 30 years. MC 5 is applicable under Guideline B since the foreign financial interest is not sufficient to affect Applicant's security responsibilities.

Thus, after considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to the Applicant.

### **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: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2 Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

### **DECISION**

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

Charles D. Ablard

Administrative Judge