

DATE: December 7, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-22643

**ECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esq., Deputy Chief Department Counsel

**FOR APPLICANT**

Pro Se

**SYNOPSIS**

Applicant failed to mitigate the foreign preference security concern raised by his dual U.S.-Lebanese citizenship and foreign influence security concerns raised by members of his immediate family and others to whom he is bound by affection or obligation who live in Lebanon and Kuwait. 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 3 August 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference), Guideline B (Foreign Influence), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 29 August 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 9 November 2004. On 17 November 2004, at the request of Applicant for expedited handling of his case, 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 24 November 2004.

With the agreement of Department Counsel, I kept the record open until 1 December 2004 to allow Applicant an opportunity to surrender his Canadian passport to Canadian authorities. On 18 November 2004, Applicant submitted evidence from the Canadian Embassy in Washington, D.C., that his passport had been canceled. Exs. DD, EE.

**FINDINGS OF FACT**

Applicant is a 46-year-old computer network administrator for a defense contractor doing business with the U.S. Army in Kuwait. His supervisors have attested to his talent, dedication to duty, and support for the mission.

Applicant was born and raised in Lebanon. Although he lived in Lebanon until he was 16 years old, he traveled every

year until 1970 to Ghana, where his father sold cars, computers, and spare parts. In 1974, he went to Saudi Arabia for two years to work construction. He then traveled to Germany to find a university he could attend. He was not accepted at any of the German universities, so in 1977, he moved to Kuwait. There, he worked in sales and later as a flight attendant for the national airline. In 1985, Applicant moved to Canada, eventually becoming a Canadian citizen in 1988 or 1989. He was employed by an investment company to support visits by potential Kuwaiti investors when they visited Canada. Later he became a sales manager for an electronics retailer. He acquired a Canadian passport, but maintained his Lebanese passport.

Two of Applicant's brothers are U.S. citizens. They spent 10 years trying to get Applicant into the U.S. Shortly after he became a Canadian citizen, Applicant was accepted for immigration to the U.S. He held several jobs after entering the U.S., one of which was with a Department of Justice contractor that required him to obtain a clearance.

From May 1998-September 2000, Applicant worked in Kuwait for a defense contractor. While he was in Kuwait, he married a Lebanese woman who was employed by the Kuwaiti national airline. While working in Kuwait, Applicant was notified that he had been accepted for naturalization in the U.S. He returned to the U.S. in October 1999 and received his U.S. citizenship and U.S. passport. He then returned to his job and family in Kuwait.

Applicant applied for a security clearance by submitting an application (SCA) in October 2000. In June 2002, he renewed his Canadian passport. In August 2004, Applicant submitted his renunciation of his Canadian citizenship to the Canadian Consulate in Kuwait. In August 2004, he submitted his Canadian passport to the Canadian Embassy in Washington, D.C., and it was canceled. Applicant allowed his Lebanese passport to expire in January 2003. Applicant did not use his Canadian or Lebanese passports after he obtained his U.S. citizenship and passport.

Applicant's wife is still a Lebanese citizen, but has a U.S. immigrant visa. She has applied for U.S. citizenship. Applicant and his wife have three children, all born in Kuwait. The three children are now U.S. citizens. Applicant's mother is a permanent resident of the U.S., but is currently residing in Lebanon. Applicant's five sisters, his mother-in-law, and two of his wife's sisters are citizen residents of Lebanon. Applicant's wife also has a sister who lives in Kuwait and a brother who lives in England.

Applicant travels to Lebanon on occasion to visit his mother. The last time he visited was July 2004.

Applicant has a bank account in Kuwait that he uses to pay for his rent and utilities. Applicant and his family stay in his time-share when they visit his mother in Lebanon. He is selling the time-share to his brother.

## 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 personnel 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

### **Guideline C--Foreign Preference**

In the SOR, DOHA alleged Applicant exercised dual citizenship with the U.S. and Canada (¶ 1.a) and Lebanon (¶ 1.b). When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., then he may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1.

Although the allegations contained in SOR ¶ 1 are rather vague--they fail to explain what Applicant specifically did that amounted to an exercise of dual citizenship--the evidence clearly supports a finding that Applicant exercised dual citizenship with Lebanon by retaining his passport after he became a U.S. citizen and obtained a U.S. passport, and exercised dual citizenship with Canada by renewing and retaining his Canadian passport after he became a U.S. citizen. DC E2.A3.1.2.1 and DC E2.A3.1.3.2. The possession and use of a foreign passport disqualifies an applicant from obtaining a security clearance unless he surrenders the foreign passport or obtains official approval for its use by the U.S. Government. Memo. from Arthur L. Money, Asst Sec. Def. Command, Control, Communications, and Intelligence, to Directors of Defense Agencies, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline* (Aug. 16, 2000).

Applicant took appropriate measures to renounce his Canadian citizenship and have his passport canceled. MC E2.A3.1.3.4. Although his Lebanese passport expired, Applicant failed to produce any evidence he had renounced his Lebanese citizenship. I find against Applicant on ¶ 1.b.

### **Guideline B--Foreign Influence**

In the SOR, DOHA alleged Applicant's wife (¶ 2.a), his mother (¶ 2.b), and his parents-in-law (¶ 2.d) are citizen residents of Lebanon; one of his son's is a citizen of Canada residing with Applicant in Saudi Arabia (¶ 2.c); he has resided in Kuwait and Saudi Arabia continuously since May 2001 (¶ 2.e); and he owns a time-share in Beirut, Lebanon (¶ 2.f). A security risk may exist when an applicant's immediate family, or other persons 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.

The Government's evidence and Applicant's admissions constitute substantial evidence of a potentially disqualifying condition under Guideline B--members of Applicant's immediate family--his mother, five sisters, wife, and children--are present in foreign countries. DC E2.A2.1.2.1. It is also a security concern for an applicant to have foreign associates to whom he has close ties of affection or obligation present in a foreign country. DC E2.A2.1.2.1. There is a rebuttable presumption that an applicant has ties of affection for, or obligation to, immediate members of his spouse's family. ISCR Case No. 01-26893, 2002 DOHA LEXIS 505 at \*8 (App. Bd. Oct. 16, 2002). Applicant failed to rebut the presumption that he has ties of affection or at least obligation to his mother-in-law and sisters-in-law who are citizen residents of Lebanon.

These security concerns raised by Applicant's foreign associates may be mitigated if they are not agents of a foreign power and are not 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 involved and loyalty to the U.S. MC E2.A2.1.3.1. Applicant's family members and foreign associates are not "agents of a foreign power." *See* 50 U.S.C. § 1801(b). But their presence in volatile countries such as Lebanon and Kuwait put them in a position of vulnerability to exploitation such that Applicant could be forced to

choose between his loyalty to his family and his loyalty to the U.S.

The fact that Applicant has resided in Kuwait and Saudi Arabia continuously since May 2001 would not, under normal conditions be a security concern because he was working for a defense contractor on U.S. Army projects. But it becomes a security concern when placed in context of his numerous family contacts in the Middle East.

Applicant's interest in a time-share in Lebanon is a minor financial matter. I find for Applicant on ¶ 2.f. MC E2.A2.1.3.5.

Determining suitability for a security clearance requires a predictive judgment--it is an attempt to determine who *might* pose a security risk at some future time, based on certain established guidelines. As noted above, the decision to deny an individual a security clearance is not a judgment of an applicant's loyalty. Exec. Or. 10865 § 7. It is merely a determination the applicant has not met the strict guidelines set out by the President and the Secretary of Defense. Under all the circumstances of this case, I am unable to conclude the foreign influence security concerns have been mitigated.

### **Guideline E--Personal Conduct**

In the SOR, DOHA alleged Applicant falsified material facts on his SCA by failing to disclose his active Canadian and Lebanese passports (3.a). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

It is a condition that may be disqualifying if an applicant deliberately omits or falsifies relevant and material facts in an SCA DC E2.A5.1.2.2. The Government established by substantial evidence that Applicant failed to disclose in his SCA (Ex. 1) that he had active Canadian and Lebanese passports. Although he did sign Ex. 1, Applicant actually completed a hand-written worksheet that was used by another person to input Applicant's answers into the computer. In his hand-written application, Applicant admitted he had a Canadian passport. I find Applicant's statement that he just did not think about his Lebanese passport to be credible. After considering all of the circumstances, I am convinced Applicant did not deliberately omit or falsify relevant and material facts from his SCA. I find for Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2.f: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a: For Applicant

**DECISION**

In light of all of the circumstances 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 (Directive).