

DATE: August 9, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23669

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Phillip Carter, Esquire

SYNOPSIS

This 48-year-old Engineering Manager was born in Lebanon in 1956, came to the United States in 1973, attended college, and became a U.S. citizen in 1984. His wife and children are all U.S. citizens residing in the U.S. He has some relatives still residing in Lebanon. He has worked in the defense industry for most of his career and has held a DoD security clearance since 1988, without any reported problems. He has a long history of service to the U.S. and is highly praised by his employer and colleagues for making valuable contributions to U.S. security interests. In context, the risk caused by relatives in Lebanon is minimal and acceptable. He credibly avers he would report any improper contacts. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On January 31, 2005, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On February 17, 2005, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on March 15, 2005. The Notice of Hearing was issued on May 6, 2005, and the hearing was conducted on June 1, 2005. At the hearing, the Government introduced six exhibits (Government's Exhibits (GX) 1 - 6). Applicant testified and introduced 20 exhibits (Applicant's Exhibits (AX) A - T). The transcript was received at DOHA on June 10, 2005.

FINDINGS OF FACT

Applicant is a 48-year-old Program Manager for a major defense contractor. He received a Master's Degree in Engineering from a U.S. university. He first received a DoD secret level security clearance in 1988 and has worked on classified programs ever since (Tr at 37). His company is now seeking a Top Secret clearance and access to Sensitive Compartmented Information (SCI). He was born in Lebanon in 1956 and came to the U.S. when he was 17 (Tr at 29). He worked himself through college and began working for a large oil company. He grew to admire life in the U.S. and decided to stay (Tr at 30 - 32). He received advanced degrees and moved into the Aerospace industry (Tr at 33, 34). He currently "run[s]" an important Air Force program (Tr at 35).

He is responsible for protecting his program's classified material and regularly receives training on the handling and protection of classified material, including what to do if he is ever asked by anyone to act improperly. He has never had a security-related problem (Tr at 38). In fact, there was an incident within the last year when another company inadvertently sent Applicant's group a sensitive document pertaining to another company. Applicant immediately protected the document, contacted his company's legal department, and notified both DoD and the Air Force (Tr at 39, 40).

His promotions have carried him into upper management (Tr at 35, 36) and he has received numerous awards (Tr at 36 and AX K). He is married to a Lebanon-born naturalized U.S. citizen, who came to the U.S. in 1988 (Tr at 27). She is a Business Consultant with a large health care provider. They have two teenage children, born in the U.S.

The SOR contains four allegations, 1.a. - 1.d., under Guideline C (Foreign Preference), and five allegations, 2.a - 2.f., under Guideline B (Foreign Influence). In his response, Applicant admits allegations 1.b., 1.c., 2.c., and 2.e. He denies allegations 1.a., 1.d., 2.a., 2.b., and 2.d. His admissions are accepted and made Findings of Fact.

After considering the totality of the evidence derived from the contents of the case file, including his testimony, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline C (Foreign Preference)

1.a. - Applicant exercised dual citizenship with Lebanon and the United States (U.S.), but he no longer does. Applicant has formally renounced his Lebanese citizenship (Tr at 46).

1.b. - Applicant applied for and received a Lebanese passport on December 9, 1994, and renewed that passport in about 2001, even though he had become a naturalized U.S. citizen on July 9, 1984 and held a valid U.S. passport issued on October 24, 1997. He surrendered his Lebanese passport in March 2005 (AX A, AX B, AX C, and AX D and Tr at 46), as soon as he learned it was of security concern.

1.c. - Applicant used his Lebanese passport instead of his U.S. passport to travel to Lebanon

in December 2002. When he first traveled to Lebanon, after obtaining his U.S. passport, "It was kind of painful going in and out and some folks recommended using [the Lebanese passport]" (Tr at 41). He used his U.S. passport on all parts of this trip, except to enter and leave Lebanon, because it was more "convenient" to use it (Tr at 41, 42) and he didn't know it was a security concern (Tr at 44). On his most recent trip to Lebanon, traveling with his family, he left his Lebanese passport at home and used his U.S. passport, as did his wife and children (Tr at 42).

1.d. - As of July 21, 2003, when he was interviewed by an agent of the Defense Security Service (DSS), Applicant still possessed a Lebanese passport that was issued on December 9, 1994, and renewed in 2001. That passport was valid until October 17, 2006 but, as cited above, Applicant surrendered that passport in arch 2005.

Guideline B (Foreign Influence)

2.a. - Applicant's mother is a citizen of the U.S., as of last year (Tr at 69). She resides with Applicant in the U.S. for six months a year and in Lebanon for the other six months. His mother is 76, and has always been a housewife. She never worked for the Lebanese government (Tr at 47, 48). His deceased father operated a grocery store in Lebanon.

2.b. - Applicant's mother-in-law is a citizen of Lebanon, but has received a Permanent Resident Visa, and has come to the U.S. She plans to become a U.S. citizen (Tr at 48). She now spends the majority of her time in the U.S. (Tr at 48, 49). She also was a housewife. Neither she nor Applicant's mother receives any support from the Lebanese government (Tr at 50). When she is in Lebanon, Applicant's wife speaks with her mother only every couple of months (Tr at 65).

2.c. - Applicant's paternal aunt is a resident of Lebanon. She is 70, and a housewife.

2.d. - Applicant has a friend who is a resident of Lebanon. Their last contact was in 2002.

To Applicant's knowledge, none of the individuals are employees/agents of the Lebanese government. He does not think any of them would ask him to do anything improper (Tr at 54).

2.e. - Applicant traveled to Lebanon in December 1998, March 2000, October 2001, and December 2002, to visit relatives.

Besides his immediate family, Applicant's three siblings also live in the U.S. Two are U.S. citizens and the third is a Permanent Resident (Tr at 51). There are some cousins still in Lebanon but they do not communicate much (*Id.*).

No one has ever approached him about disclosing any sensitive or classified information (Tr at 55). He strongly and credibly avers his love for and dedication to, the U.S. and his intent to protect U.S. security interests (Tr at 54, 60).

Applicant has substantial assets in the U.S. and none in Lebanon. He earns about \$170,000 a year and has about \$1 million in equity in his home (Tr at 59). His wife had some interest in real estate in Lebanon, but has deeded it over to her relatives in that country (Tr at 58). They have about \$300,000 in investments (Tr at 59).

Applicant has received highly positive work evaluations (AX F) and awards (AX K). His colleagues speak very highly of him in letters of commendation and recommendation. The Facility Security Officer cites Applicant as "act[ing] in a careful and conscientious way with respect to security" (AX M). Other letters cite Applicant as being "straightforward, honest and trustworthy" and loyal to the U.S. (AX N, AX O, and AX S); and a man of integrity and patriotism (AX P). His wife expresses her confidence in Applicant and their joint love for the U.S. and appreciation for what this country has allowed them to become (AX Q).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing participation; (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 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the

initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant was born in 1956 in Lebanon and came to the U.S. at age 17. He is now 48 and has been a U.S. citizen since 1984. His ties to the U.S. are many and varied. He and his family have taken advantage of the opportunities available to them and have made themselves part of the American dream.

As to Foreign Preference concerns:

1.a. - Applicant no longer exercises dual citizenship with Lebanon. The record suggests that he retained his Lebanese passport after becoming a U.S. citizen in 1984, because that was his ancestry, he still had relatives there, and he did not know it was a security concern. He has held a DoD security clearance since 1988 (GX 1), so he has had about 17 years of working with classified materials without the Government expressing any concern about security. There is no record of his having any security problems, or any problems that might affect his eligibility during this 17 years. He is undergoing this adjudication because the information he provided in his security clearance application came within the Directive guidelines that had changed since his last security clearance investigation. Once he learned of the Government's concern, he took prompt action in surrendering the Lebanese passport and in renouncing his Lebanese citizenship.

1.b., 1.c., and 1.d. - The exercise of dual citizenship cited in 1.a. implicitly relates to his renewal of his Lebanese passport after becoming an American citizen and his use of that passport to enter and leave Lebanon. Convenience is not an excuse, but since Applicant was not aware it was of security concern, any negative inference is minimal, viewed in the context of the entire record. His prompt surrender of the Lebanese passport once he understood the Government's concerns was a positive step.

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.

Disqualifying Condition (DC) (1) - the exercise of dual citizenship did occur, but is no longer a factor; DC (2) - possession and/or use of a foreign passport did occur, but is no longer a factor.

Mitigating Conditions - MC (1) - dual citizenship is/was based solely on parents' citizenship or birth in a foreign country; and MC (4) - Applicant has expressed a willingness to renounce dual citizenship and, in fact, has already done so.

Considering the entire record, I conclude Applicant has demonstrated an unequivocal preference for the U.S.

Guideline B (Foreign Influence)

1.a. - 1.d. - The DOHA Appeal Board has held that: "an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk (Appeal Board Decision, ISCR Case No. 01-26893 (October 16, 2002)). It is reasonable to view Lebanon differently from countries such as Canada and Great Britain. Lebanon's government is not cited as being hostile to the U.S., but as Department Counsel noted, it is a country where terrorism is active and sometimes aimed at Americans (GX 5 and GX 6). Appeal Board guidance also states that: "family ties in [any] foreign country

raise a *prima facie* security concern that requires an applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him" (Appeal Board Decision, ISCR Case No. 02-06478 (May 19, 2003)).

The Concern: A security risk may exist when [members of]an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Disqualifying Condition - (1) an immediate family member . . . is a citizen of, or resident or present in, a foreign country.

Mitigating Conditions - (1) - a determination that the immediate family members . . . would not constitute an unacceptable security risk.

The government must always establish a case with evidence that supports SOR allegations under specific guidelines. It is axiomatic in the security clearance process, however, that the ultimate burden of proof is always on the applicant to demonstrate that he or she is eligible to hold a security clearance and not on the government to prove otherwise. In this case, I have carefully considered the totality of the record, relating to the presence of relatives in Lebanon. The evidence that those in Lebanon are not agents of a foreign power or in a position to be used by a foreign power to coerce or influence Applicant to act improperly is generally limited to Applicant's understanding of the other party's life, work, and circumstances and the relationship between them and Applicant. The fact that there have been no problems in the past is not proof that such problems will not occur in the future, but such a factor logically must be considered along with all other evidence.

What is most important is how an Applicant is likely to react to any improper requests. Applicant strongly avers he would promptly report such contacts. While such statements as to future conduct can be viewed primarily as promises of future action, they are entitled to some weight and evaluated in context. In addition, in the present case, there is evidence that Applicant acted speedily and properly in reporting the receipt of sensitive documents his company should not have been sent. I conclude there is little or no risk that he would feel any "loyalty" to his relatives to the extent that he would feel himself "forced" to choose between the relatives and his obligations to the United States. The record establishes Applicant to be a man of integrity and dedication to the United States and one who can be relied upon to act properly under all circumstances.

Applicant has made himself a part of the American dream and nothing he has done or said suggests there is a risk he would violate his obligations to his adopted country. The support of those who have known him in his private life and working in classified programs is highly probative of Applicant's character and far outweighs the speculative risks caused by the presence of relatives in Lebanon. I have considered that the other country is Lebanon. I have also considered his deep ties to the United States, and his long and valuable contributions to the national defense effort. I conclude Applicant has demonstrated that he is not vulnerable to improper pressure from any source and can be relied upon to protect U.S. security interests.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. For the Applicant

Subparagraph 2.d. For the Applicant

Subparagraph 2.e. For the Applicant

Subparagraph 2.f. For the 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 a security clearance for Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE