

DATE: June 20, 2005

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In Re:  
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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-04343

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's foreign influence, including close foreign family ties, pose a potential security risk and have not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On June 14, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on July 6, 2004, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on October 26, 2004. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on November 8, 2004, and he submitted a reply dated November 22, 2004.

The case was assigned to the undersigned for resolution on December 1, 2004.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 39 years of age and has a Bachelor's Degree in Electrical Engineering. He is employed as a Laboratory Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Lebanon in 1966. With the hopes of pursuing the American dream, with the help of his parents in 1987, he moved to France to study while his immigration papers to the United States were being processed. His paper work was processed in 1990, and he was granted an immigration visa in January 1991, and he became a permanent legal resident of the United States. He became a United States citizen in September 1996.

The Applicant has six brothers and two sisters. Four of his brothers are naturalized United States citizens, three live in the United States. Of the other two brothers, one is a permanent resident alien and resides in the United States, the other is a citizen of Lebanon and resides there. His mother, one brother and one sister are permanent resident aliens of the United States but currently live in Lebanon. His father, one sister, and one brother are only citizens of Lebanon and reside there. The Applicant has other extended family members including sisters-in-law, a brother-in-law, aunts uncles and cousins who are citizens and residents of Lebanon. The Applicant states that most of his immediate family members who are not United States citizens are in the process of immigrating to the United States. He states that none of his siblings or their spouses are connected with the Lebanese Government or hold any anti-United States sentiments.

The Applicant financially supports his father and mother in Lebanon. Although it is completely voluntary he sends about \$200.00 a month to support his father's welfare in Lebanon. He sends about \$700.00 per year to support his mother in Lebanon. His parents have no retirement source of income or medical benefits. The Applicant explained that as part of the Lebanese culture, the elderly parents depend on their children for help whenever possible.

The Applicant traveled to Lebanon to visit his relatives in July-August 1993, July-September 1997 and September-October 1999.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

The Applicant completed a security clearance application dated June 8, 1998, which asked him if he has traveled outside of the United States on other than official U.S. Government orders in the last seven years? The Applicant answered, "YES", and listed travel to France from November 24, 1996, to January 15, 1997, and to Lebanon from July 5, 1997, to September 5, 1997. He failed to list his travel to Lebanon from July 1993 to August 1993. He admits that he made a careless mistake by not mentioning his trip to Lebanon from July 1993 to August 1993, but that it was not intentional.

The Applicant also provided a signed sworn statement to the Defense Security Service wherein he stated that he had a Lebanese passport when he immigrated from France to the United States in January 1991 and had not used this passport since then. He failed to disclose that he used his Lebanese passport in July 1993 when he traveled to Lebanon. In addition, after being issued a United States passport in November 1996, he used his Lebanese passport in July 1997 to enter Lebanon and again in September 1997 to exit Lebanon. The Applicant claims that he simply overlooked the fact that he used his Lebanese passport in 1993. During this trip, the Applicant renewed his Lebanese passport.

The Applicant explained that in 1997, his brother deeded to him real property located in the United States worth approximately \$40,000.00 to protect the property from legal action that was being taken against his brother. The issue in court has now been resolved and the property was deeded back to the Applicant's brother in July 2000.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision

in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

#### Guideline B (Foreign Influence)

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) 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.

#### Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

#### Condition that could mitigate security concerns:

None.

#### Guideline E (Personal Conduct)

#### Condition that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or statute, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

#### Condition that could mitigate security concerns:

2. The falsification was an isolated incident, was not recent, and the individual has subsequently proved correct information voluntarily.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates that he has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The evidence establishes that the Applicant has a large family in Lebanon, including his parents, two brothers, two sisters and other extended family members that he remains close to. He provides financial support to his parents in Lebanon on a regular basis. He has even done favors for one of his brothers, resulting in dishonest conduct when he agreed to accept title to real estate valued at \$40,000,00, owned by his brother, for the sole purpose of avoiding legal process against his brother. Disqualifying Condition (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* applies. The Applicant's evident close relationship with his parents and other relatives who are citizens of and reside in Lebanon is a security concern for the Government. Based on the foregoing, this does raise a security concern and Guideline B (Foreign Influence) is against for the Applicant.

With respect to the Applicant's failure to list all of his dates of travel to Lebanon on his PSQ and his failure to reveal the extent to which he used his Lebanese passport, (even after becoming a United States citizen for travel to Lebanon), in his sworn statement to DSS, I find that the Applicant intentionally falsified his security clearance application. These falsifications occurred in 1998, some seven years ago, and the Applicant has since then provided the Government with correct information. Mitigating Condition (2) *The falsification was an isolated incident, was not recent, and the individual has subsequently proved correct information voluntarily* applies. Accordingly, I find for the Applicant under Guideline E (Personal Conduct).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline B.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant

1.b.: Against the Applicant 1.c.: Against the Applicant

1.d.: Against the Applicant 1.e.: Against the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge