

DATE: December 8, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-05051

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esquire, Department Counsel

**FOR APPLICANT**

Patrick H. O'Donnell, Esquire

**SYNOPSIS**

Applicant was born in Lebanon, but came to the U.S. in 1984 and was naturalized as a U.S. citizen in 1996. He still has family ties and financial interests in Lebanon, and he renewed and used his Lebanese passport for six years after he was naturalized. In 2002, Applicant gave up his Lebanese citizenship and passport. That same year, he also pleaded guilty to driving under the influence (DUI). Security concerns about his criminal conduct and foreign preference are mitigated; however, Applicant has not mitigated concerns about foreign influence. Clearance is denied.

**STATEMENT OF THE CASE**

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to give Applicant a security clearance. On August 3, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline B (foreign influence), Guideline C (foreign preference), and Guideline J (criminal conduct). Applicant timely answered the SOR, admitted with explanation all but one of the allegations,<sup>(2)</sup> and requested a hearing.

The case was assigned to me on July 18, 2005, and I convened a hearing on August 16, 2005. The government submitted 11 exhibits (GE 1 - 11), and Applicant submitted seven exhibits (AE A - H). Applicant also testified, and presented the testimony of two other witnesses. DOHA received the transcript (Tr) on August 17, 2005.

**FINDINGS OF FACT**

After a thorough review of the pleadings, transcript, and exhibits, I also find the following:

Applicant is 41 years old, and is a partner in an engineering firm which supports a variety of Defense Department water treatment and desalinization efforts around the world. He has applied for a security clearance to enable his company to participate in similar contracts with the State Department.

Applicant was born and raised in Beirut, Lebanon, but left in 1984 at age 18 to study engineering in the United States. He worked his way through college and was hired in 1992 by an engineering firm where he met his current business partner. The two left the firm in October 1996 and started their own company, which has been very successful. Applicant became a U.S. citizen in 1996.

Applicant has been married twice. His first marriage, to a U.S. citizen, ended in divorce in 1988. He re-married in 1993 to a Lebanese citizen. His current wife became a U.S. citizen in 1997, and the couple has two children, born in the U.S., both under 10 years of age.

Applicant's father is almost 70 years old. He has been retired for nearly 15 years from the Lebanese army, where he rose to the rank of Chief Warrant Officer. Applicant also has three siblings, a brother and two sisters. His brother was educated at a private U.S. university, then returned to Lebanon. He came back to the U.S. in May 2005, on a K-1 employment visa, presumably sponsored by the Applicant, to work as an accountant for Applicant's firm. One of his sisters is a teacher in the United Arab Emirates. The other sister was a teacher in Lebanon, but stopped working to stay at home and raise her children. Her husband leases land to businesses seeking to mine granite and other stones for commercial manufacturing applications. All of Applicant's immediate family members residing overseas are citizens of Lebanon.

Applicant's father-in-law is also retired from the Lebanese army, having attained the rank of two-star lieutenant. Applicant's mother-in-law is a housewife. Applicant's three brothers-in-law are all educated professionals - an engineer, an architect, and an obstetrician/gynecologist. Applicant's wife's family are all citizens of Lebanon and reside in East Beirut, as do Applicant's father and one sister.

Applicant owns a house in Lebanon, where his father lives for most of the year. Applicant receives about \$4,000 each year in rental income from his father, which is valued at an estimated \$140,000. Applicant has also invested in an apartment building in Beirut, which he owns with his wife's brothers and her uncle. His investment is worth about \$100,000 and Applicant sometimes uses one of the apartments when he is in Lebanon. His holdings in Lebanon constitute between 5% and 10% of his total net worth of more than \$3,000,000.

Applicant presented information about his personal and business finances. Part of the information consisted of a personal financial statement submitted to obtain a \$500,000 line of credit for his company. Applicant included the value of his overseas real estate holdings in that statement as part of the overall calculation of his personal net worth, on which his credit as a company officer is based.

Applicant's company rents office space in Beirut to maintain a presence in the region and for business dealings there. Applicant feels there is a significant potential market for his company's water treatment and water supply engineering services in the Middle East. Indeed, Lebanon has in recent years made changes in its laws to allow more foreign investment there. [\(3\)](#)

Applicant travels to Lebanon and other parts of the Middle East several times each year. In May 1999, Applicant renewed his Lebanese passport even though he had become a U.S. citizen in 1992 and had received a U.S. passport in 1993. Applicant used his Lebanese passport when he traveled to Lebanon because it was convenient to do so. After he was interviewed by a Defense Security Service (DSS) agent in July 2002, Applicant decided to give up his Lebanese citizenship and passport. He has since traveled using only his U.S. passport. As of the hearing, the last time he was in Lebanon was May 2005 to bring his brother back to the U.S. Since 1997, Applicant has traveled to Lebanon at least 24 times.

In the summer of 2001, Applicant's company hired a Lebanese citizen who had just graduated as an engineer from a U.S. university. Applicant began the process of sponsoring the new hire for a visa commensurate with his status as a foreign citizen working in the U.S. Before the process was too far along, the sponsored employee was hired away by a different company for more money and has pursued his immigration matters through that company. [\(4\)](#)

Applicant testified he has been interviewed by a local agent of the Federal Bureau of Investigation (FBI) on several

occasions. The agent contacts Applicant occasionally to ask his input, as a long-time U.S. resident from Lebanon, about people from the Middle East living in the area where Applicant lives in the U.S. He believes the FBI is trying to build and maintain a database of persons of interest as a result of heightened domestic security concerns after the 9-11 attacks. (5)

Historically, Lebanon has had close ties with the U.S. and has a democratic form of government which allows representation of a variety of diverse factions within that country. Indicative of the diversity and inclusiveness of the Lebanese democracy is the fact several members of the terrorist organization Hezbollah are elected members of parliament. Since the late 1970s, Lebanon has been beset by prolonged civil wars, and occupation by military forces from Syria, a state sponsor of terrorism. Also, Islamic militant groups and terrorist organizations have been active there. Some of these groups have ties to Al-Qaida, and all are bent on the destruction of Israel and the expulsion of U.S. interests from the Middle East. Recent events, such as the assassination of the Lebanese Prime minister and car bombings in downtown Beirut, have contributed to heightened concern about the viability of Lebanon's close ties to the U.S. and the overall stability of that country. While the Lebanese government is on record as opposing the goals and methods of these groups, it has done nothing to stop them or expel them from Lebanon. Finally, Lebanon has a spotty human rights record, including government censorship of the media and restrictions on assembly, arbitrary arrests and detention, and torture aimed at groups intent on de-stabilizing the government. Also of concern is the lack of an independent judiciary as shown by that branch's record of vulnerability to influence by various political factions in Lebanon. However, there is no indication the government of Lebanon itself targets U.S. citizens or interests to obtain intelligence at the expense of U.S. interests. (6)

Applicant was arrested on February 2, 2002, and charged with driving under the influence of alcohol (DUI). He eventually pled guilty, was sentenced to 60 days in jail (suspended), placed on probation for two years, assessed a fine and court costs, had his drivers license suspended for one year, and ordered to complete an alcohol safety awareness course. Applicant has completed all the terms of his sentence and probation, his license has been reinstated, and there is no information suggesting he has an alcohol problem. Applicant has never been arrested for or committed any other criminal conduct.

### **POLICIES AND BURDEN OF PROOF**

The Directive sets forth adjudicative guidelines (7) to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline B (foreign influence), Guideline C (foreign preference), and Guideline J (criminal conduct).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest (8) for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. (9) A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. (10)

## CONCLUSIONS

Under Guideline J, a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.<sup>(11)</sup> A person who is willing to ignore the law, thereby risking criminal sanctions including fines and incarceration, may also be willing to disregard rules, regulations, and procedures intended to protect classified information. As alleged in SOR ¶ 3.a, Applicant was arrested for and pleaded guilty to DUI. Under Guideline J, disqualifying condition (DC) 2<sup>(12)</sup> applies. By contrast, this arrest was an isolated event, that occurred more than three years ago, and there is no indication Applicant abuses alcohol or has ever been anything other than an upstanding, law-abiding citizen. Guideline J mitigating condition (MC) 1<sup>(13)</sup> and MC 2<sup>(14)</sup> apply. Further, this offense was a misdemeanor and it does not appear Applicant's background reflects "a history or pattern of criminal activity," begging the question why this allegation was included in the SOR in the first place. I conclude Guideline J for the Applicant.

The security concern addressed under Guideline C is that an applicant who acts in such a way as to indicate a preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States.<sup>(15)</sup> The SOR alleged here that Applicant renewed his Lebanese passport despite being a U.S. citizen and already holding a valid U.S. passport (SOR ¶ 1.a), and that he used his Lebanese passport rather than his U.S. passport at least 13 times between 1997 and 2002 (SOR ¶ 1.b). The government has presented sufficient evidence to support these allegations. On these facts, Guideline C DC 1<sup>(16)</sup> and DC 2<sup>(17)</sup> apply.

On August 16, 2000, the Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (OASDC3I) issued a memorandum clarifying DoD policy on the security significance of foreign passport possession. According to that memorandum, a person holding and/or using a foreign passport is precluded from also holding a security clearance. Although there is no mitigating condition that directly corresponds to DC 2 (possession of a foreign passport), the OASDC3I memorandum provides that surrender of the passport or U.S. Government approval of its use may mitigate DC 2. In fact, long before the SOR was issued, Applicant renounced his foreign citizenship and relinquished his foreign passport. To his credit, he took these actions as soon as he realized during his subject interview with DSS that possession of a foreign passport and the exercise of dual citizenship might adversely affect his ability to obtain a security clearance. Guideline C MC 4<sup>(18)</sup> applies. The SOR also alleged in ¶¶ 1.c and 1.d that Applicant has property interests in Lebanon worth about \$240,000. For these facts to be disqualifying under Guideline C, Applicant must be shown to have used his foreign citizenship to protect those interests.<sup>(19)</sup> The record here does not support such a finding. These same facts are alleged as a security concern under Guideline B, and are discussed within that context, below, but they do not adversely affect Applicant's suitability for clearance under Guideline C. Based on the totality of information available on the issue of foreign preference, I conclude Guideline C in favor of the Applicant.

Under Guideline B, 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 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.<sup>(20)</sup> Available information in this case supports the allegations in SOR ¶¶ 2.a and 2.b, that Applicant has close ties to his father and one sister and to his wife's parents and siblings in Lebanon. Applicant's brother is now in the U.S. working for Applicant; however, the record is unclear about his brother's future residency or citizenship plans and it must be considered that he would return to Lebanon at some point. Further, as alleged in SOR ¶¶ 2.c and 2.d, the record evidence shows Applicant's father and father-in-law have ties to the Lebanese government through their status as retired Army officers. These facts, in turn, support application of Guideline B DC 1,<sup>(21)</sup> and DC 3.<sup>(22)</sup>

By contrast, the foregoing requires consideration of MC 1.<sup>(23)</sup> Applicant's father and father-in-law have official connections to the Lebanese government through their status as retired Army officers, but their positions do not fall within the meaning of "agents of a foreign power,"<sup>(24)</sup> and none of Applicant's nor his wife's other relatives have any connection with the Lebanese government. However, application of MC 1 also turns on the question of whether the relatives are "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(s) involved and the United States."<sup>(25)</sup> With the exception of a sister who lives in the UAE, and,

for the time being, his brother in the U.S., Applicant's father and his wife's relatives in Lebanon may be vulnerable to such pressure insofar as they live in and around Beirut in light of the ongoing violence fomented by terrorist groups there. Concern about their vulnerability to pressure by the Lebanese government must also take into account that country's human rights record. The Lebanese government may have committed human rights abuses, but those actions appear directed at the terrorist groups operating from Lebanon and with the intent to curtail terrorist activities.

There is no indication such arbitrary actions would be directed against ordinary citizens such as Applicant's relatives and in-laws. Although it is unlikely the government of Lebanon itself would exert pressure on Applicant's family to gain access to U.S. classified information through his ties of affection, analysis of this aspect of MC 1 must also consider the terrorist groups operating in Lebanon. These groups have been included in statutory definitions of the term "foreign power"<sup>(26)</sup> and their presence in Lebanon must be considered, for purposes of MC 1 applicability, the same as a recognized foreign government or nation. Because the terrorist groups operating in Lebanon and the surrounding areas are engaged in international terrorism with stated goals of destroying U.S. interests or expelling U.S. interests from the Middle East, MC 1 cannot apply here. Applicant also has financial interests in Lebanon, as alleged in SOR ¶¶ 2.e and 2.f, in the form of two investment properties. One of the properties he rents to his father for the cost of utilities. The other is an apartment building Applicant invested in with his three brothers-in-law and his wife's uncle, and where Applicant sometimes stays when he is in Lebanon. As alleged in SOR ¶ 2.g, Applicant's company maintains an office in Beirut to try to market their services in what Applicant and the State Department both describe as an increasingly lucrative market for western businesses. The issue these allegations raise is whether Guideline B DC 8<sup>(27)</sup> applies. Applicant's position is that his personal holdings are minimal and of no security significance when compared to his overall net worth. Yet he relied in part on the value of the house and apartment to get a line of credit for his business. Additionally, as alleged in SOR ¶ 2.i, Applicant travels extensively to Lebanon, ostensibly to promote his company's business prospects there. I conclude the totality of the information available warrants application of DC 8. I have also considered the corresponding MC 5.<sup>(28)</sup> Although it applies, its value to Applicant is limited. Applicant's house and his interest in the apartment building are a very small portion of Applicant's overall net worth. But his financial interests also include his ongoing efforts to establish his company's business in Lebanon and elsewhere. He travels to Lebanon several times annually to see his family and to promote his business interests. These are not minimal financial interests.

Despite his claims to the contrary, his finances would be adversely affected if a foreign power were to act against his overseas holdings in an effort to leverage Applicant's access to classified information. The sum of the information available on the issue of foreign influence shows Applicant's personal and financial interests are still as intricately tied to Lebanon as they are to the U.S., despite having lived here for more than 20 years. On balance, I conclude Guideline B against the Applicant.

I have carefully weighed all of the evidence, and I have applied the relevant adjudicative factors as appropriate. No single factor is dispositive of my decision in this matter. Applicant has successfully mitigated the government's concerns about his criminal conduct and about his exercise of his Lebanese citizenship. However, the resolution of one or more issues in favor of the Applicant does not compel a like resolution of the ultimate issue in this case; that is, whether it is clearly consistent with the national interest for Applicant to have access to classified information. Reasonable concerns remain about the presence of Applicant's family and Applicant's other connections and obligations in a foreign country. A fair and commonsense assessment<sup>(29)</sup> of the record before me shows the facts established in this case constitute an unacceptable risk that Applicant would be vulnerable to pressure that may cause him to undermine U.S. interests in favor of foreign interests. Accordingly, I conclude the available information is insufficient to resolve the government's doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Preference (Guideline C): 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

Paragraph 2, Foreign Influence (Guideline B): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Subparagraph 2.e: Against the Applicant

Subparagraph 2.f: Against the Applicant

Subparagraph 2.g: Against the Applicant

Subparagraph 2.h: For the Applicant

Subparagraph 2.i: Against the Applicant

Paragraph 3, Criminal Conduct (Guideline J): FOR THE APPLICANT

Subparagraph 3.a: For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is denied. atthew E. Malone Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant denied with explanation the allegation in SOR 2.d. His denial was based solely on an inaccuracy in the allegation wherein his father-in-law was identified as a general in the Lebanese army. He was, in fact, a "two-star" lieutenant. This error was corrected on motion of counsel (Tr., p. 107- 108) to amend the SOR, which I granted, to conform to the evidence.
3. AE H.
4. Tr., p. 60 - 63.
5. Tr., p. 70 - 72; p. 89 - 90.
6. GE 6 - 10.
7. Directive, Enclosure 2.
8. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
9. *See Egan*, 484 U.S. at 528, 531.
10. *See Egan*; Directive E2.2.2.

11. Directive, E2.A10.1.1.
12. Directive, E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
13. Directive, E2.A10.1.3.1. The criminal behavior was not recent;
14. Directive, E2.A10.1.3.2. The crime was an isolated incident;
15. Directive, E2.A3.1.1.
16. Directive, E2.A3.1.2.1. The exercise of dual citizenship;
17. Directive, E2.A3.1.2.2. Possession and/or use of a foreign passport;
18. Directive, E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.
19. See Directive, E2.A3.1.2.6. (Using foreign citizenship to protect financial or business interests in another country)
20. Directive, E2.A2.1.1.
21. Directive, E2.A2.1.2.1. 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;
22. Directive, E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government;
23. Directive, E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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 person(s) involved and the United States;
24. See Title 50 U.S.C. § 1801(b).
25. Directive, E2.A2.1.3.1.
26. Title 50 U.S.C. § 1801(a)(4).
27. Directive, E2.A2.1.2.8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.
28. Directive, E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.
29. Required by Directive, E2.2.3.