

DATE: July 7, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11930

ECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Mark S. Zaid, Esq.

SYNOPSIS

Applicant is 55 years old, married, and works for a defense contractor. He has lived in the U.S. since 1970, been a citizen since 1981, and worked for the same company since 1979. He has had a security clearance for 22 years. He emigrated from Lebanon, and has two widowed sisters still living there with their children. All his other immediate family members are either deceased or living in the U.S. or Canada. He surrendered his Lebanese passport and identification card, renounced his Lebanese citizenship. Applicant has not mitigated the foreign preference, foreign influence, and personal conduct security concerns. 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 March 11, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on March 30, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on November 28, 2005. On February 22, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on March 7, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 55 years old, married for 28 years, has a bachelor's degree in electrical engineering and a master's degree

business management. He works for a defense contractor. Applicant immigrated to the U.S. in March 1970 to attend college. He was 19 years old when he immigrated from Lebanon. He became a U.S. citizen in 1981. (Tr. 73-79, 134, 144; Exhibit 1)

Applicant obtained and used a U.S. passport for overseas travels except to Lebanon. He retained his Lebanese passport until it expired in 2000, having renewed it in 1995 for another five year term, and used it to travel to Lebanon to visit his family over the years. His first trip after coming to the U.S. was in 1977, then again in 1982. His next trip was in 1983 as a side trip from a work site in the middle east while there for his employer. His latest trips were in 1996, 1998, 2000, and in 2003 when he visited his dying brother. Applicant's parents are deceased, and his two sisters who live in Beirut, Lebanon are widowed. Another brother died in the 1970s. Applicant has a brother who is a Canadian citizen and a civil engineer who works overseas in Dubai. He has two other brothers who are U.S. citizens and live in the U.S. Applicant visits his sisters every few years, and telephones them every few months. When he visits his sisters, he stays two or three weeks. He intends to continue visiting his relatives in Lebanon in the future. None of his relatives work for the Lebanese government. (Tr. 79, 81, 83, 93, 95, 121, 123, 124, 125, 147; Exhibits 2-4)

Applicant used his Lebanese passport until it expired for ease in getting into Lebanon. His niece told him in 2000 that he only needed a Lebanese identification card to enter the country. Thereafter he obtained and used a Lebanese identification card with his U.S. passport to enter Lebanon to visit his sisters. On February 22, 2006, Applicant mailed his Lebanese passport, his Lebanese identification card, and a letter to the Lebanese consulate in Detroit, Michigan, renouncing his dual citizenship and returning the documents. (Tr. 71, 73, 84, 85, 121, 147; Exhibit C)

Applicant owned a one-fifth share in half of a rental property in Lebanon currently valued at about \$35,000. He inherited it from his father, as his siblings did also inherit their shares. His father was partner with a friend, and Applicant's siblings inherited shares from half the rental property. Applicant never took any money from the property's income, and wants to transfer his share in half shares to his two sisters in Lebanon for their benefit. His sisters sold their inherited shares a few years ago. They manage the property now for Applicant and two of his brothers who own a half interest in the property. Applicant's financial holdings in the U.S. are worth about \$700,000. (Tr. 89-92, 126, 127; Exhibit 2)

On three trips to Lebanon Applicant traveled for a day shopping trip with his sisters and nieces to Damascus, Syria. They went by taxi or bus for the cheaper shopping there. These shopping trips occurred in November 1998, May 2001, and approximately December 2004, as Applicant testified that trip was two years and two months before this hearing. Applicant claimed he neglected to list these first two trips as foreign destinations on his security clearance application (SCA) through inadvertence and because they were part of his trip to Lebanon. He forgot they occurred because they were short trips. He answered questions about the Syrian trip to the government investigator during the second follow-on interview with the agent (January 2005) after the agent examined his Lebanese passport that Applicant gave him during the first general subject matter interview (April 2003). Applicant declared in his January 2005 statement that he "had no other foreign travel since November 2003, failing to list his December 2004 trip to Syria. Applicant enjoyed the shopping in Damascus, but will not return there ever. (Tr. 102-122, 132-141; Exhibits 2 and 3)

Applicant is an excellent employee for his employer, well regarded by his managers, and is a key factor in products that brought business from the U.S. government for his employer. Applicant has worked for the same employer since 1979. Applicant disclosed his shopping trips to one manager after they occurred. He is a trusted employee, and a good neighbor according to his character witnesses and close friends. (Tr. 26-64, 73; Exhibits A and B)

Applicant considers the U.S. his home, and Lebanon only his birthplace. He has had a security clearance since 1984 without any problems. He had the security clearance while his parents were alive in Lebanon, his brother was there, and the country was embroiled in its civil war. Applicant would contact his security officer if anything inappropriate were ever asked of him by someone outside the company. Applicant is direct and precise in his testimony, and credible in his explanations and answers to all questions. (Tr. 77, 87, 93, 100-102, 119)

Lebanon is a parliamentary democracy at the eastern end of the Mediterranean Sea. It had a civil war along religious and factional lines from the 1975 into 1990. The Syrian Army entered Lebanon in the 1980s as peacekeepers and remained as occupiers until 2005 while maintaining the Lebanese governmental institutions in form. Lebanon became the situs of

several terrorist organizations over the past 30 years that have engaged in armed conflict with Israel and Western countries. The Lebanese government recognizes those organizations as legitimate resistance groups. Lebanon exempts "legal resistance" groups from money laundering and terrorism financing laws. The U.S. State Department issued a travel warning on May 27, 2005, to advise Americans of dangers for them in traveling in certain parts of Lebanon. There are several concerns about human rights in Lebanon and the record there is poor, according to the U.S. State Department report of February 2005. At the same time, the State Department warned that Lebanon remained host to terrorist organizations. It does not have control yet over all its territory as it did prior to 1971. Syria is designated by the U.S. State Department as a state sponsor of terrorism. Four main sets of U.S. Government sanctions are imposed pursuant to U.S. statutes on state sponsors of terrorism, including denial of duty-free treatment of goods exported to the U.S. and prohibition of certain Defense Department contracts with companies controlled by state sponsors, in addition to a ban on arms-related exports and sales. (Exhibits 5-13)

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. 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. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335

at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

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.* E2.A3.1.1

Guideline B: Foreign Influence: *The Concern: 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.* E2.A2.1.1

Guideline E: Personal Conduct: *The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.* E2.A5.1.1

Applicable also is the Memorandum of August 16, 2000, entitled "Guidance of DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudicative Guidelines", by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), commonly known as the "Money Memo". This memorandum guidance states that

possession and/or use of a foreign passport may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identify of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raised doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.

CONCLUSIONS

Regarding the foreign preference security concern, the Disqualifying Conditions (DC) applicable are DC 1 (The exercise of dual citizenship. E2.A3.1.2.1) and DC 2 (Possession and/or use of a foreign passport. E2.A3.1.2.2). Applicant retained his Lebanese passport after becoming a U.S. citizen in 1981, and used it for travel to Lebanon between 1982 and 2004 to visit his family. He also used the passport and the Lebanese identification card to travel to Syria between 1998 and 2004.

The Mitigating Conditions (MC) applicable are MC 1 (Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1) and C 4 (Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4). Applicant's Lebanese passport expired in 2000 and he did not renew it. He did use a Lebanese identification card with his U.S. passport to enter Lebanon after 2000, all for his own convenience and safety. However, he has renounced in writing any vestiges of his former Lebanese citizenship and sent the Lebanese consulate his expired passport and current identification card. The oney Memo criteria are, therefore, not applicable.

However, these MC do not mitigate Applicant's use of his Lebanese passport and identification card to travel on three occasions to Syria from Lebanon. He expressed his preference for Lebanon by using those documents for his trips to Syria because it was easier for him to use them than his U.S. passport. He did not disclose those trips on his SCA nor to the government investigator until confronted about them. Applicant has not mitigated the foreign preference security concern.

The foreign influence security concern is the next topic under consideration. The applicable DC are DC 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. E2.A2.1.2.1), and DC 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. E2.A2.1.2.8). Applicant has two widowed sisters living in Lebanon. Applicant owns a share in a rental property in Lebanon. His father owned half the property, and with each son getting a share and the two daughters getting half a share, Applicant obtained one-fifth interest of a half interest in a \$35,000 property, which would about \$3,200 in value today. Applicant and his brothers own their shares today, but his sisters sold their shares.

MC 1 (A determination that the immediate family members, (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 E2.A2.1.3.1) and MC 5 (Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. E2.A2.1.3.5) are the only MC that could apply, but do not. The burden of proof and persuasion is on Applicant to show the MC apply. I conclude he did not meet his burden.

Applicant's sisters are the only immediate family members still living in Lebanon and while they are not agents of any foreign power, they are in a position to be exploited by the Lebanese government and the terrorist groups operating in Lebanon. The Lebanese government does tolerate terrorist groups that attack the U.S. and its allies. Applicant and his family members in Lebanon compound that environment by traveling on three occasions in the past eight years to shop in Syria, a state sponsor of terrorism. Applicant shopped in a country against which the U.S. has trade restrictions because of Syria's sponsorship of terrorism. Because they are in the situation, and Applicant produced no persuasive evidence that they are not in a position to be exploited by a foreign power in a way to force Applicant to choose between loyalty to his family members and the U.S. The foreign powers are Syria and the terrorist organizations in Lebanon.

Also, regarding the three trips to Syria for one day each, they were for shopping purposes. However, they were to a nation that is a state sponsor of terrorism that controlled Lebanon as a satellite nation during the time Applicant was visiting and shopping. Applicant will visit his family in Lebanon in the future, as he declared in his April 2003 statement. He testified that he would never visit Syria again. There are restrictions on trade between the U.S. and Syria, yet Applicant went shopping there and made purchases. Each time he made those trips he had a security clearance.

It is more significant that Applicant did not disclose those trips on his SCA nor to the Government investigators until asked about them in January 2005. Yet, even then his January 2005 statement does not disclose his December 2004 Syrian trip, reinforcing the pattern of non-disclosure Applicant exhibits regarding his trips to Syria. He also states he has had no other foreign travel since November 2003, even though he was questioned about Syrian trips by the investigator.

Finally, his financial interest in Lebanon is significant. He owns an interest in real estate. He has not divested himself of the interest, though he has had years to do so. After considering all of the evidence, Applicant has not mitigated the foreign influence security concerns.

Regarding the personal conduct security concern over non-disclosure of two Syrian shopping trips on his SCA, and the false statement to the government investigator in April 2003 concerning Applicant's Syrian trips, DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar form used to determine security clearance eligibility or trustworthiness E2.A5.1.2.2), DC 3 (Deliberately providing false or misleading information concerning relevant and material matters to an investigator or other official representative in connection with a personnel security or trustworthiness determination. E2.A5.1.2.3), and DC 4 (Personal conduct that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person

susceptible to blackmail. E2.A5.1.2.4) apply. Applicant deliberately failed to disclose his trips to Syria while holding a security clearance. Knowing of the government's concern about these trips, as late as January 2005 he was still concealing those trips. His statement to the investigator in January 2005 that he had no other foreign trips since November 2003 and his trip to Lebanon deliberately fails to disclose the December 2004 Syrian trip. There is no persuasive explanation of that failure to disclose other than deliberate falsification. Applicant has not disclosed any of his Syrian trips until confronted about them, but this January 2005 falsification is most significant.

No MC apply on these facts. Therefore, I conclude this security concern against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For 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

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

DECISION

In light of all of 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 Applicant. Clearance is denied.

Philip S. Howe

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).