

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant was born and raised in Lebanon, immigrated to the United States in 1989 and became a United States citizen in 1995. Although able to mitigate foreign preference concerns surrounding his dual citizenship and having had and used a Lebanese passport, he was unable to mitigate foreign influence concerns as a result of his father and numerous relatives being resident citizens of Lebanon. Clearance is denied.

CASENO: 03-12035.h1

DATE: 06/29/2005

DATE: June 29, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-12035

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant was born and raised in Lebanon, immigrated to the United States in 1989 and became a United States citizen in 1995. Although able to mitigate foreign preference concerns surrounding his dual citizenship and having had and used a Lebanese passport, he was unable to mitigate foreign influence concerns as a result of his father and numerous relatives being resident citizens of Lebanon. 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 January 28, 2004, DOHA issued a Statement of Reasons (SOR) <sup>(1)</sup> detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence), and Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing on February 5, 2004, and elected to have a hearing before an administrative judge.

Department Counsel indicated he was ready to proceed on April 21, 2004. The case was assigned to me on April 22, 2004. On June 1, 2004, DOHA issued a notice of hearing scheduling a hearing on June 17, 2004. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, the government presented two exhibits, which were marked as Government Exhibits (GE) 1 and 2, and were admitted without objection. Applicant presented one exhibit, which was marked as Applicant Exhibit (AE) A, and was admitted without objection. Department Counsel requested I take administrative notice of the United States (U. S.) Department of State Travel Warning pertaining to Lebanon, which was marked as Administrative Exhibit 1. DOHA received the transcript on July 1, 2004.

## FINDINGS OF FACT

Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 34-year-old married man, who has one daughter, age three. Applicant was born and raised in Lebanon and immigrated to the U. S. with his family, consisting of his mother, father, and brother in 1989. Tr. 34. At the time he immigrated to the United States, he was "19 or 20" years old. Tr. 35.

Applicant's father, who was a bank manger in Lebanon, was unable to find satisfactory employment in the U. S. In 1990, Applicant's father returned to Lebanon to resume his former position as bank manager. Applicant's father recently retired and lives in Lebanon. Tr 24. Since retiring, Applicant's father "is in the process of renewing his paperwork so he can come back to the United States." Tr. 24. Applicant's mother spends the majority of her time in the U. S.; however, she does spend several months per year in Lebanon. Tr. 23.

Applicant's mother became a naturalized U. S. citizen in July 1996, Applicant's brother became a naturalized U. S. citizen in April 1996, and Applicant became a naturalized U. S. citizen in November 1995. GE 1. Applicant met his wife in Lebanon at a family gathering and they were married in Lebanon in July 1999. She has since become a naturalized U. S. citizen. Tr. 34, GE 1, GE 2. Applicant's wife is a free lance graphic design artist. Tr. 36.

In 1993, Applicant was awarded a bachelor of science degree, majoring in mechanical engineering, and in 1996, he was awarded a master of science degree in industrial engineering. Tr. 16, 33-34. After completing his studies, Applicant was employed at a firm from May 1996 to August 2001 as a plant manager, was unemployed from September 2001 to November 2001, and has been employed with his current employer, a defense contractor, since November 2001. His initial position was senior manufacturing engineer. He served in this position until he was promoted to manufacturing program manager in September 2003. Tr. 15-16, GE 1.

Applicant seeks a security clearance because "My job requires a security clearance. Also, any future promotion within [defense contractor employer] is depending on this security clearance. As a result, my well-being and the well being of my family is dependent on the security clearance." Tr. 45.

Applicant is a dual citizen of Lebanon and the United States by virtue of being born in Lebanon to Lebanese parents, (¶ 1.a.) He became a U. S. citizen after he immigrated to the U. S. with his parents. Applicant testified, "I haven't gone out

and got that citizenship after I became an American citizen." Tr. 12-13.

SOR ¶ 1.b. alleges Applicant was issued a Lebanese passport in July 1998 after he had become a naturalized U. S. citizen in November 1995 and was issued a U. S. passport in April 1997. Applicant pointed out that his Lebanese passport was issued to him in August 1992 before he became a naturalized U. S. citizen. Applicant renewed his Lebanese passport. Applicant testified, "The only reason I renewed it in 1998 is merely for convenience because it's easier to enter Lebanon with a Lebanese passport." Tr. 13. His Lebanese passport expired on July 5, 2003. Response to SOR, AE 1. (SOR ¶¶ 1.b., 1.c., 1.d.).

Applicant maintains his dual citizenship ". . . because nobody has asked me to relinquish my Lebanese citizenship. At the time, I was naturalized in the United States nobody has asked me since that date to give up my Lebanese citizenship . . ." Tr. 14 (SOR ¶ 1.e.).

Applicant maintains telephone contact with his father approximately two times per month. Additionally, Applicant has a number of other relatives in Lebanon to include parents-in-law, grandparents, aunts, uncles, nieces, and nephews. He maintains telephone contact with his grandparents and some of his aunts and uncles four-to-fives times a year. Response to SOR. Applicant speaks with his parents-in-law, "Three times, four times a year maybe." Tr. 26. (SOR ¶¶ 2.a. through 2.c.)

Applicant asserts that none of his relatives are agents of a foreign power or in a position to be exploited by a foreign power in a way that could force him to choose between loyalty to them or the U. S. and further asserts the nature of his contact with his relatives in Lebanon is casual and infrequent. Tr. 14-15. He further asserts that his relatives in Lebanon are middle class citizens and not in a position to be exploited. Response to SOR, Tr. 24-25.

SOR ¶ 2.d. alleged Applicant has e-mailed a former classmate in Jordan weekly since September 1999. Applicant's Response to the SOR denied this allegation and indicated he met this former classmate in the U. S. at the college they both attended. Applicant further stated the e-mail contact referred to in the SOR was limited to Applicant being on his former classmate's distribution list, which consisted of forwarding e-mails and jokes. He testified, "Those e-mails have dramatically gone down in recent years, simply because I have stopped returning his e-mails or talking to him that often." Tr. 31.

SOR ¶ 2.e. alleged Applicant's cousin is a Lebanese citizen residing in the United Arab Emirates, with whom he has had e-mail contact three-to-four times since summer 2002. While Applicant admitted this to be the case, he asserts his cousin is not an agent of a foreign power or in a position to be exploited by a foreign power, and that his contact with his cousin is "casual and very infrequent." Response to SOR.

SOR ¶ 2.f. alleged Applicant traveled to Lebanon in 1997, 1998, 1999, 2001, and 2003, which he admitted and explained such travel was for the purpose of visiting "immediate family members." Response to SOR.

SOR ¶ 2.g. alleged Applicant traveled to Syria in 1999. Applicant admitted this and explained the sole purpose of his traveling to Syria was to visit the U. S. Embassy to file the necessary paperwork for his Lebanese wife to accompany him to the U. S. He further explained that the U. S. Embassy in Lebanon was closed at that time and his only option was to go to the U. S. Embassy in Syria. Having completed the necessary paperwork for his wife to immigrate to the U. S., Applicant stated, ". . . I don't have any reason to enter Syria ever again." Tr. 15.

Applicant owns a home and two cars. Additionally, he is registered to vote in the US, has bank accounts in the US and exercises all rights of US citizenship. Tr. 36-37.

## **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

In August 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC3I), issued a memorandum clarifying the application of the foreign preference security guideline for cases involving possession and/or use of a foreign passport, commonly referred to as the Money memorandum, because it was signed by Assistant Secretary Arthur L. Money. In pertinent part, the Money Memorandum "requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains approval for its use from the appropriate agency of the United States Government."

## BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

## CONCLUSIONS

## Guideline C-Foreign Preference

In the SOR, DOHA alleged Applicant exercised foreign preference by being a dual citizen of both the United States and Lebanon (¶ 1.a); possessing a Lebanese passport (¶ 1.b), used his Lebanese passport versus his U. S. passport when he traveled to Syria in 1999 and to Lebanon in 1997, 1998, 1999, and 2001 (SOR ¶ 1.c.), obtained and renewed his Lebanese passport for easier entrance into Lebanon because he felt it was much safer than showing his U. S. passport (¶ 1.d.), and maintains his dual citizenship because he does not want to relinquish his right to any inheritance upon his father's death (¶ 1.e.).<sup>(2)</sup>

*The Concern:* When an individual acts in such a way 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. Directive ¶ E2.A3.1.1.

The Government established its case under Guideline C by Applicant's admissions and evidence submitted as to ¶¶ 1.a., and 1.c. through 1.e. Applicant denied the allegation in ¶ 1.b., which remains unrebutted by the government. These allegations give rise to Foreign Preference Disqualifying Conditions (FP DC) E2.A3.1.2.1. (*The exercise of dual citizenship*); and FP DC E2.A3.1.2.2. (*Possession and/or use of a foreign passport*).

Applicant holds Lebanese citizenship by virtue of his Lebanese birth, thus triggering Foreign Preference Mitigation Condition (FP MC) E.2.A3.1.3.1 (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*). Regarding the passport issue, Applicant was issued a Lebanese passport before he was eligible to apply for a U. S. passport. Granted, he renewed his Lebanese passport after he had been issued a U. S. passport. The evidence supports the notion he did this for convenience and furthermore was unaware of any adverse consequences of this action. The evidence does not support the allegation that he was issued a Lebanese passport in July 1998, but rather a renewal of his Lebanese passport. The difference may be subtle, but significant enough to make a difference. In any event, Applicant's Lebanese passport expired in July 2003. Applicant apparently remains in possession of an expired Lebanese passport, which may trigger the provisions of the Money Memorandum.<sup>(3)</sup> But this matter was not alleged in the SOR. Department Counsel did not move to amend the SOR during the hearing and further, did not mention the policy in closing argument. Given this lack of notice to Applicant, I will not address the Money memorandum on the merits. Lastly, Applicant, in essence, expressed a willingness to renounce his Lebanese citizenship triggering FP MC E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*). Also see *fn 2*. I find for Applicant on this Concern.

## Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's father is a resident citizen of Lebanon (¶ 2.a.), that his parents-in-law are resident citizens of Lebanon (¶ 2.b.), that his grandparents, aunts, uncles, nieces, and nephews reside in Lebanon and that he telephones his grandparents and some of his uncles and aunts four-to-five times a year (¶ 2.c.), that he has e-mailed a former classmate in Jordan weekly since September 1999 (¶ 2.d.), that his cousin is a citizen of Lebanon residing in the United Arab Emirates, who he has e-mailed three-to-four times since summer 2002 (¶ 2.e.), that he traveled to Lebanon in 1997, 1998, 1999, and 2001 (¶2.f.), and that he traveled to Syria in 1999 (¶ 2.g.)

*The Concern:* A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he 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. Directive ¶ E2.A2.1.1.

The Government established its case under Guideline B by Applicant's admissions as to ¶¶ 2.a. through 2.g. These all give rise to Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1. (*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*). Applicant's father, parents-in-law, and numerous other relatives are resident citizens of Lebanon. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. (4)

FC MC E2.A2.1.3.1 provides: (*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*).

Security clearance decisions are not an exact science. Instead, they are predictive judgments about an Applicant's security suitability in light of that person's past conduct and *present circumstances*. *Egan*, 484 U.S. at 528-29. The evidence established that Applicant is a loyal U. S. States citizen. At the same time, the evidence established Applicant has strong ties of affection or obligation to family members, in particular his father, who is a resident citizen of Lebanon. Applicant failed to demonstrate that his family members are not *in a position of vulnerability* such that he could be forced to choose between loyalty to the United States and loyalty to them. His past visits to Lebanon, his being married to a Lebanese wife, who also has relatives in Lebanon, and presence of his own relatives to include his father and occasionally his mother in Lebanon during these present times pose a potential security risk. See Administrative Exhibit 1, U. S. State Department Travel Warning for Lebanon.



Applicant did demonstrate that his contacts with former classmate in Jordan and his cousin in the United Arab Emirates are not agents of a foreign power or in a position to be exploited by a foreign power and that his contacts with his former classmate are casual and infrequent. Applicable are FC MC E2.A2.1.3.1., above, and FC MC E2.A.2.1.3.3 (*Contact and correspondence with foreign citizens are casual and infrequent*).

Given the fact there was no U. S. Embassy in Lebanon in 1999, Applicant had no reasonable alternative other than to travel to the U. S. Embassy in Syria in 1999 for the purpose of filing the necessary paperwork for his wife to accompany him to the U. S. No further discussion is warranted on this point.

I find against Applicant on ¶¶ 2.a. through 2.c., and for him on ¶¶ 2.d. through 2.g.

The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, as set forth in the Directive, to the evidence presented. Under the Applicant's current circumstances a clearance is not warranted. Additionally, this determination does not question the Applicant's patriotism and should not be seen as such.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraphs 1.a. - 1.e.: For Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraphs 2.a. - 2.c.: Against Applicant

Subparagraphs 2.d. - 2.g.: For 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.

**Robert J. Tuider**

**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.
2. Department Counsel stated, "The Guideline C issues are largely mitigated here. There were not Money issues because the passport is expired." Tr. 40. He further added, ". . . any bad person, sort of implications involved with what Applicant has done, the situational preference he did is nominal in this case and it's too nominal to sustain a Guideline C allegation, particularly in light of the fact that he registered for the US draft." Tr. 41. Department Counsel did not introduce nor did he ask that I take administrative notice of Assistant Secretary of Defense Memorandum, dated August 16, 2000, For Secretaries of the Military Departments, et al; Subject: Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline, commonly known at the "Money Memo."
3. ISCR Case No. 01-24306 (September 30, 2003) at p. 5. (Addressing the issue of an expired passport, the DOHA Appeal Board stated that "[s]urrender contemplates returning it to the issuing authority, and merely keeping a foreign passport until it expires does not satisfy this requirement in the ASDC3I memo.") (citation omitted).

