

DATE: November 23, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-17658

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn Antigone Trowbridge, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant held U.S.-Lebanese dual citizenship and a Lebanese passport, but he surrendered his Lebanese passport and renounced his Lebanese citizenship, thereby complying with the Money Memorandum. He traveled to Lebanon six times: three times to visit ill and now deceased parents, twice to introduce his American wife and children to his parents, and once to reassure his brother and sisters that he had recovered from a serious injury. His visits with Lebanese aunts, uncles, and cousins are casual and infrequent. Security concerns based on foreign preference and foreign influence are mitigated. Clearance is granted.

**STATEMENT OF THE CASE**

On March 15, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 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). The SOR alleges security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence) of the Directive. Under Guideline C, the SOR alleges that Applicant exercises dual U.S.-Lebanese citizenship (¶ 1.a), maintains and uses a Lebanese passport (¶¶ 1.b. and 1.c.), and traveled to Lebanon six times between 1990 and 2001 (¶ 1.d). Under Guideline B, the SOR alleges that Applicant maintains regular contact with two sisters who are citizens and residents of Lebanon and a brother who is a citizen of Lebanon and resides in Kuwait (¶¶ 2.a., 2.b., and 2.d), and has personal contact with aunts, uncles, and cousins who are citizens and residents of Lebanon when he visits there (¶ 2.c).

Applicant answered the SOR in writing on April 6, 2004, admitted the allegations, offered explanations, and requested a hearing. The case originally was assigned to another Administrative Judge, but it was reassigned to me on September 23, 2004, based on workload considerations. On September 23, 2004, DOHA issued a notice of hearing setting the case for October 20, 2004. Applicant appeared as scheduled. DOHA received the transcript (Tr.) on October 28, 2004. I kept

the record open to enable Applicant to produce documentary evidence that he had surrendered his expired Lebanese passport and renounced his Lebanese citizenship. He produced the additional evidence on October 27, 2004, and November 15, 2004 (Applicant's Exhibits L and M).

### **FINDINGS OF FACT**

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 44-year-old senior systems engineer for a defense contractor. He has worked for his present employer since April 2001. He enjoys a reputation for skill, dedication, and hard work. He previously had a security clearance from 1989 until 1995. It was administratively terminated when he changed jobs.

Applicant was born in Beirut, Lebanon. In 1979, he went to Canada to attend college. In July 1982 he came to the U.S., where he finished his college education in 1986. He married a native-born U.S. citizen in November 1983, and he became a naturalized U.S. citizen in May 1989. He has a daughter and a stepdaughter, both native-born U.S. citizens. He owns a home in the U.S. and has retirement funds and other investments in the U.S. He has no property or investments in Lebanon.

At time of the hearing, Applicant was a dual U.S.-Lebanon citizen and held passports from both countries. He kept his Lebanese passport for family medical emergencies, because it allowed him to enter Lebanon without waiting for a visa. For each trip to Lebanon, he notified his security officer of his travel plans and his intent to use his Lebanese passport. His Lebanese passport expired in August 2003. Applicant was unaware that his use of his Lebanese passport raised security concerns until he was interviewed by a Defense Security Service (DSS) investigator in May 2003. He told the DSS agent that he was willing to surrender his Lebanese passport and renounce his Lebanese citizenship. He repeated that offer in his answer to the SOR and at the hearing. Shortly after the hearing, Applicant surrendered his Lebanese passport and renounced his Lebanese citizenship.

Applicant's parents are deceased. He has two sisters who are citizens and residents of Lebanon. He has telephonic contact with them about once a month and on holidays. His older sister is a seamstress and is married to a retired bank employee. His younger sister is a part-time teacher and is married to an auto body repairman. Applicant's sisters are not financially dependent on him, but he occasionally gives them financial help amounting to less than \$150.00 per year.

Applicant has aunts, uncles, and cousins in Lebanon. He does not keep in contact with them, except for casual visits when he is in Lebanon. He last visited with two cousins in 2001. None of Applicant's relatives are connected with the Lebanese government or military.

Applicant's brother is a Lebanese citizen. He has lived in Kuwait since 1974, working in his uncle's export-import business.

Applicant has visited Lebanon six times. In 1990 he visited his ill father, who had lost a leg due to diabetes. In 1992 he visited to introduce his wife to his parents, who were unable to travel to the U.S. because of his father's disability. In 1993, he went to his father's funeral. In 1994, he introduced his children to his Lebanese family and showed his children the country. In 1998, he visited his critically ill mother, who is now deceased. In 2001, he visited his sisters and brother to reassure them that he had recovered from a serious injury.

Lebanon is a parliamentary democracy. Its foreign policy is heavily influenced by Syria and is focused on the Middle East. It is in the process of joining the World Trade Organization. Certain terrorist organizations use Lebanon as a base of operations. The U.S. has traditionally maintained close ties with Lebanon to help preserve its independence, sovereignty, national unity, and territorial integrity. U.S. Department of State Background Note: Lebanon, November 2003 (updated August 2004), pp. 4-5, 9-10, admitted as Government Exhibit 3.

### **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 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." Exec. Or. 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.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through ¶¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 ¶¶ E2.2.1.1 through E2.2.1.9.

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, 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. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* Directive ¶ E3.1.15. 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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

### **Guideline C (Foreign Preference)**

Under Guideline C, "[w]hen 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." Applicable disqualifying conditions include the exercise of dual citizenship (DC 1), and the possession and/or use of a foreign passport (DC 2) Directive, ¶¶ E2.A3.1.2.1, E2.A3.1.2.2). Applicant's admission that he exercised dual citizenship and used a Lebanese passport established DC 1 and DC 2.

Two mitigating conditions (MC) are relevant. MC 1 applies when "[d]ual citizenship is based solely on parents' citizenship or birth in a foreign country." MC 1 is established by the evidence in this case.

MC 4 applies when an applicant "has expressed a willingness to renounce dual citizenship." Applicant stated his willingness to renounce dual citizenship in his answer to the SOR and in his testimony. After the hearing, he corroborated that testimony with documentary evidence that he had surrendered his Lebanese passport and renounced

his Lebanese citizenship. I conclude that MC 4 is established.

When DC 2 applies, the clarifying guidance issued by the Assistant Secretary of Defense, Arthur L. Money, dated August 16, 2000 (Money Memorandum), requires that a 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." The Money Memorandum also makes it clear that Guideline C recognizes "no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country." Surrender of a passport contemplates returning it to the issuing authority. Merely keeping a passport until it expires does not satisfy the guidance in the Money Memorandum. ISCR Case No. 01-224306 at 5 (App. Bd. Sep. 30, 2003). Applicant has complied with the Money Memorandum.

I conclude that Applicant has mitigated the security concerns set out in the SOR ¶¶ 1.a., 1.b., and 1.c. by surrendering his Lebanese passport and renouncing his Lebanese citizenship. I also conclude that he has mitigated the security concerns in the SOR ¶ 1.d., because he has shown that his travel to Lebanon was not based on his preference for Lebanon to the U.S., but was motivated by his affection for his U.S. and Lebanese families. Three of the six trips were directly related to the illness and eventual death of his parents. Two trips were to introduce his American wife and children to his Lebanese parents. One trip was to reassure his brother and sisters that he had recovered from a serious injury. Applicant's clear preference for the U.S. is clearly demonstrated by the evidence. He has been a U.S. citizen for 15 years. He has resided in the U.S. for almost half his life, owns a home in the U.S., spent his entire professional life in the U.S., and renounced his Lebanese citizenship.

### Guideline B (Foreign Influence)

A security risk may exist when an applicant's immediate family, or other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. 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. A disqualifying condition (DC 1) may arise when "[a]n 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." Directive ¶ E2.A2.1.2.1.

Applicant's brother and two sisters are Lebanese citizens. His sisters reside in Lebanon and his brother resides in Kuwait. Based on this evidence, I conclude that DC 1 is established.

In cases where an applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members (spouse, father, mother, sons, daughters, brothers, sisters) . . . 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." Directive ¶ E2A2.1.3.1.

Notwithstanding the facially disjunctive language of MC 1 ("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power"). Since the Government has produced substantial evidence to establish DC 1, the burden has shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

Guideline B is not limited to countries that are hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Although Lebanon is not hostile to the U.S., the distinctions between friendly and hostile governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, even friendly nations can have profound disagreements with the United States over matters that they view as important to their vital interests or national security. Finally we know that even friendly nations have engaged in espionage against the United States, especially in the economic, scientific,

and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Applicant's siblings clearly are not agents of a foreign power. They are not connected to the Lebanese government or military. Their political, economic and social statuses do not expose them to exploitation or make them likely targets of terrorism. Lebanon is not a major practitioner of industrial espionage. The possibility of direct or indirect coercion through Applicant's siblings is remote. I conclude MC 1 is established with respect to Applicant's siblings, and the security concerns in the SOR ¶¶ 2.a., 2.b., and 2.d. are mitigated.

Applicant does not maintain regular contact with his Lebanese aunts, uncles, and cousins. He has visited them only when he was in Lebanon, apparently more as an act of familial courtesy rather than affection or obligation. He last visited two cousins three years ago, and his visits with other relatives were even earlier. I conclude that MC 2 (contacts are casual and infrequent) is established, and the security concerns in the SOR ¶ 2.c. are mitigated.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline C (Foreign Preference): FOR APPLICANT

Paragraph 1.a.: For Applicant

Paragraph 1.b.: For Applicant

Paragraph 1.c.: For Applicant

Paragraph 1.d.: For Applicant

Paragraph 2. Guideline B (Foreign Influence): FOR APPLICANT

Paragraph 2.a.: For Applicant

Paragraph 2.b.: For Applicant

Paragraph 2.c.: For Applicant

Paragraph 2.d.: For 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 a security clearance to Applicant. Clearance is granted.

LeRoy F. Foreman

Administrative Judge