

DATE: October 18, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-17830

**ECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

FOR GOVERNMENT

Edward w. Loughran, Esq., Department Counsel

FOR APPLICANT

Ray Fournier, Personal Representative

**SYNOPSIS**

Applicant, a dual citizen of the United States and Lebanon, has acted in such a way as to indicate a preference for a country other than the United States. This has included Applicant using his Lebanese passport to enter and exit Lebanon, identifying himself to the Lebanese Government as Lebanese citizen, and working for a Lebanese Government owned company, all after he became a United Sates citizen. Applicant's immediate family members, including his aunts and uncles, with whom he has close and continuing contact, are citizens and residents of Lebanon, and he continues to own a home in Lebanon. The evidence establishes that Applicant is vulnerable to foreign influence. Mitigation has not been shown. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated March 11, 2004, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on Foreign Preference (Guideline C) related to his exercise of dual citizenship with the United States and Lebanon, and on Foreign Influence (Guideline B) concerns because of the foreign residency and citizenship of close family members and financial interest in Lebanon.

Applicant filed a notarized response dated March 22, 2004, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

On May 20, 2004, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on June 7, 2004, and the hearing was held on July 2, 2004.

At the hearing, Department Counsel offered seven documentary exhibits (Exhibits 1 through 7) and no witnesses were called. Applicant, through his personal representative, offered two documentary exhibits, (Exhibits A and B), and offered his own testimony and that of one other witness. The transcript (TR) was received on July 29, 2004.

### **FINDINGS OF FACT**

The SOR contains two allegations, 1.a. and 1.b., under Guideline C and five allegations, 2.a. through 2.e., under Guideline B. Applicant admitted all of the SOR allegations. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is a 40 year old employee of a United States defense contractor that wants him to have a security clearance. He is married and has five children. He received a masters degree in electrical engineering from a United States university.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that Applicant is ineligible for clearance because he has acted in such a way as to indicate a preference for another country over the United States.

Applicant was born in the Lebanon in 1964 and immigrated to the United States in 1975. He became a naturalized United States citizen in 1987. In October 1995 he moved back to Lebanon with his family, and he remained there through October 1998.

Applicant retained and renewed his Lebanese passport after he became a United States citizen, the last time in 2001. When he traveled to Lebanon in 1995, he used his Lebanese passport and identified himself as a Lebanese citizen. He ultimately used his Lebanese passport to enter and exit Lebanon on three occasions after he became a United States citizen, the most recent in 2002. Applicant's current Lebanese passport was issued from Beirut in 1996. Applicant finally relinquished this Lebanese passport to the proper Lebanese authorities on May 28, 2004. However, he did not renounced his Lebanese citizenship, although he had the opportunity to do it on that date. While he has indicated that he would be willing to renounce his Lebanese citizenship in the future, he had no legitimate explanation for his failure to renounce it when he had the opportunity (TR at 84-86) (Exhibit B).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are citizens of Lebanon, and that he has other significant ties to Lebanon.

Applicant has aunts and uncles who are citizens and residents of Lebanon. He generally speaks to them once a month by telephone or E-mail. Applicant still owns a home in Lebanon. He has indicated a plan to travel to Lebanon, once every three years, to visit his family and to "check on my house" (Response to SOR).

During part of the three year period that he resided in Lebanon as a Lebanese citizen, 1996-1997, he worked for a company, which was owned and run by the Lebanese Government. Applicant testified that he might consider moving back to Lebanon if it became safe to live there again.

### **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary

or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. See Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2.

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 criterion 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 emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### **Burden of Proof**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

### **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guidelines C and B:

Guideline C is based on actions taken by an individual that indicates a preference for a foreign country over the United States. Applicant's continued use of his Lebanese passport after he became a United States citizen raises serious Foreign Preference (Guideline C) concerns. Applicant's

questionable willingness to renounce his Lebanese citizenship must also be considered adversely to Applicant.

Disqualifying Conditions (DC) E2.A3.1.2.1. applies because of Applicant's use of his Lebanese passport on many occasions, his identifying himself several times upon entering and exiting Lebanon as a Lebanese citizen, and his working for a Lebanese Government owned company, all after he became a United States citizen, are continuing examples of Applicant's exercising dual citizenship. DC E2.A3.1.2.2. also applies because of Applicant's continued use and his failure to return his Lebanese passport to the proper authorities, until May 28, 2004. No mitigating condition (MC) applies in this case under Guideline C.

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be

subject to duress.

DC E2.A2.1.2.1. must be considered adversely when 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, must be considered in assessing Applicant's current suitability for access to classified information. The existence of immediate Applicant's uncles and aunts, who are citizens of and reside in Lebanon comes within Disqualifying Condition (DC) E2.A2.1.2.1. Additionally, his home ownership in Lebanon would be a substantial financial interest so that DC E2.A2.1.2.8. also applies in this case. No MC applies under Guideline B.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1. a.: Against Applicant

Subparagraph 1.b.: Against 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

Subparagraph 2.e.: Against 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 Applicant.

**Martin H. Mogul**

**Administrative Judge**