

DATE: May 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-27153

ECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Brsden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Gregory R. Neidle, Esq.

SYNOPSIS

Born in Lebanon in 1944, Applicant came to the United States (U.S.) in 1976 and became a U.S. citizen in 1983. Even though Applicant's mother and seven siblings are resident citizens of Lebanon, these ties and contacts do not make Applicant an unacceptable security risk because of: (1) his understanding that he must resist and report any attempts at foreign influence; and, (2) the strong bonds he has developed in the U.S. since he emigrated here in 1976. Clearance is granted.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 18, 2005, under Executive Order 10865 and Department of Defense Directive 5220.6, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under foreign influence (Guideline B) of the Directive. Applicant answered the SOR in writing on April 6 and September 4, 2005. The case was assigned to me on December 8, 2005. On December 12, 2005, a hearing was scheduled on January 4, 2006. The Government submitted nine exhibits (GE). Applicant submitted one exhibit (AE A), containing 20 documents. Testimony was taken from Applicant and one witness. The transcript was received on January 18, 2006.

FINDINGS OF FACT

In his April 2005 answer to the SOR, Applicant admitted the three factual allegations under the foreign influence guideline. He highlighted his work for the United States (U.S.) counterintelligence units during the current Middle Eastern conflict. In his supplemental statement furnished in September 2005, Applicant indicated that neither his mother nor siblings had ever been involved in political activities. His son studied at the American University in Lebanon. He concluded his statement with an assurance he could not be coerced or influenced by his family or any other foreign entity.

Applicant was born in Lebanon in November 1944. During high school, he participated in military training two hours a

day, and after graduation, he spent 21 days in boot camp (Tr. 73). He did not consider the instruction and boot camp as military service (*Id.*). Applicant married his wife in 1972. After attending four years at a Lebanese university, Applicant graduated in 1976 with a degree in French literature (Tr. 70). He emigrated to the U.S. in 1976 with a green card where he tried unsuccessfully to continue his postgraduate training in engineering. After attending the local university for a period, he had to withdraw because he had to care for his family (Tr. 77).

After becoming a U.S. citizen in 1983, Applicant began working for a tool and dye company building machines for three American auto companies. Then, he helped build an engine plant in the Middle East. When that company closed in early 2002, Applicant applied for a linguist position in December 2002 (GE 1). After completing his security clearance application (SCA), he was interviewed by a panel of officials. Then, he received correspondence indicating he had received an interim security clearance.

He spent three weeks in training at a U.S. military installation before being deployed to Kuwait in January 2003, where he received three weeks of additional training. In March 2003, he moved into Iraq with an intelligence unit. He spent six months in Iraq before his transfer back to Kuwait where he was assigned translating duties for the U.S. military with Kuwait. He is on call for duty 24 hours-a-day.

Applicant's mother and seven siblings are resident citizens of Lebanon (subparagraph 1.a.) Applicant's mother is 83 years old and has been a housewife all her life. She has taken care of her husband (who passed away three years ago), raised her children, and cooked the meals. Applicant considers himself close to her. He talks with her by phone about once every two months (Tr. 57), but his communication with her has not been as frequent as when he lived in the U.S. When an event occurs in the Middle East, Applicant would place a telephone call to her to make sure she is all right. Applicant last talked to her in October 2005 when his brother-in-law died (Tr. 84). Applicant never writes letters, and no one in his family has e-mail capability (*Id.*).

Applicant's mother supports herself with the retirement her husband earned while working for the port authority of Lebanon. Every two months to six months, Applicant sends his mother between \$200.00 and \$300.00 (Tr. 64, 98). Neither his mother nor his siblings are politically inclined.

Applicant's 63-year-old sister has been married since 1962. She is also a housewife with three children, none of whom live in Lebanon. Applicant's 60 year old brother is a human resource manager for the same port authority of Lebanon that Applicant's father worked for. Fifty-five percent of the port authority is owned by the state and 45% is owned by a private interest. The private interest, not the government, pays employee salaries.

Applicant's 57-year-old brother is married, has one child, and is employed as a French teacher. He lives in the same building with Applicant's mother. Another sister of Applicant is 57 years old, married to a principal who owns and administrates a high school. When her husband died in October 2005, she became the owner of the school.

Applicant's 55-year-old brother and his wife are employed as pharmacists at a hospital. Applicant's 51-year-old brother is married, and both he and his wife are employed at a refrigerator factory. Applicant's youngest sibling, his 42-year-old sister, is married and an unemployed housewife. She used to be a midwife.

Applicant does not telephone any of his brothers (Tr. 89). The last person he called was his mother, and the last time he saw her was in 2003 (*Id.*).

Applicant's son is a U.S. citizen and moved to Lebanon (subparagraph 1.b.) in 2002 to attend the American university. He graduated in June 2, 2005 with a master of arts degree in archaeology. Then, he returned to the U.S. and enrolled in a regional university where he hopes to attain a PhD in a specialty of archaeology. The son believes he has dual citizenship. In 1991, when he was approximately 12 years old, the son recalled Applicant registered him for Lebanese citizenship (Tr. 119). The son could not explain why his father wanted him to have Lebanese citizenship (Tr. 121).

Applicant traveled to Lebanon in 2000, 2001 (subparagraph 1.c.), and 2003 on his U.S. passport.

Applicant has no foreign property; he has never been employed by a foreign government. He has never engaged in any foreign activities; he does not have a foreign passport. Applicant will not succumb to efforts to influence him because he

is a man of honor (Tr. 106-108). After Applicant became a U.S. citizen in 1983, he started voting in U.S. elections (Tr. 104). He moved into his current home in 1984. In 1988, he purchased vacation property in the northern part of the state.

Applicant has been married for almost 34 years. He has two other children (U.S. citizens) besides his son. One of those children has been in the U.S. Marines for four years. Applicant's wife, 62 years old, emigrated to the U.S. and became a U.S. citizen in 1994. Applicant's wife has no remaining family members in Lebanon. Applicant's wife has two sisters who are U.S. citizens living in the U.S.

Applicant's character evidence is impressive. There are nine certificates of appreciation from Applicant's military chain of command that he has received since participating in the middle eastern conflict as a linguist and coordinator. The five letters of recommendation provide even more insight into favorable qualities of Applicant's character, specifically in (1) his leadership qualities in linguistics and logistics, (2) his persistence in achieving positive results, and (3) his readiness to volunteer for additional duties.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Foreign Influence

The security concern emerges 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 U.S. or may be subject to duress. Contacts with citizens of other countries or financial interests in other countries are also relevant in deciding whether these contacts make the individual potentially vulnerable to coercion, exploitation, or pressure.

CONCLUSIONS

A security concern is raised under foreign influence (FI) because of the resident citizenship of Applicant's mother and seven siblings. FI disqualifying condition (DC) 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*) applies. Applicant's travels to Lebanon in 2000 and 2001 also triggers concern under FI DC E2.A2.1.2.6. (*conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government*). Having weighed the entire record, the government has established its case under the FI guideline. The Applicant must show that his family members do not pose a security risk. Whether Applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5. However, contacts with an immediate family member in a foreign country raises a rebuttable presumption the contacts are not casual in nature. *See* ISCR Case No. 00-0484, at p.5 (App. Bd. February 1, 2002).

Factored into whether the family ties pose a security risk is the nature of the government in Lebanon and the politics of

the country and the region. Though a parliamentary democracy, the governing power is divided along religious and ethnic lines. Between 1991 and early 2006 when the country's prime minister was assassinated, the country enjoyed relative stability. There are still terrorist organizations in the country whose goal is to expel western countries out of the middle east.

Having weighed and balanced the entire record, together with Applicant's favorable credibility, I find that FI mitigating condition (MC) 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 such a way that could force the individual to choose between loyalty to the person(s) and the U.S.*) applies to the circumstances of this case. None of Applicant's immediate family members are agents of a foreign power. The employment of one of Applicant's brother casts some concern on Applicant's potential for vulnerability because the brother's employer is partially owned by the state. However, these concerns are dispelled by the fact he is paid by the port authority's private ownership. None of Applicant's immediate family members could be exploited by a foreign power in such a way that could force the individual to choose between the family member and the U.S. None of Applicant's family members have ever been involved in Lebanese politics.

Applicant's potential for vulnerability to coercion and influence is reduced even more by his strong ties to the U.S. Applicant has resided in the U.S. since 1976. After becoming a U.S. citizen in 1983, he immediately began exercising his right to choose his elected officials. Applicant has lived in the same house (which he also owns) since 1984. Applicant's wife since 1972, has lived with him since she became a U.S. citizen in 1994. Applicant has approximately \$12,000.00 in his retirement account. In addition to his home, he owns a parcel of land he purchased in 1988. In sum, notwithstanding his periodic money transfers to his mother up to five times a year, Applicant is not a potential security risk because his commitment and ties to the U.S. justify complete confidence he can be expected to resist and report any attempt at foreign influence or pressure.

During the course of his testimony, Applicant's son testified that Applicant registered him for Lebanese citizenship when he was 12 years old. Though the record conclusively shows that in 1991, Applicant was a U.S. citizen, the record is not clear on the status of Applicant's Lebanese citizenship at the time he registered his son. Assuming Applicant had not formally renounced his Lebanese citizenship, his actions to register his son for foreign citizenship could be interpreted as indirectly accepting a privilege or benefit of foreign citizenship he would not otherwise be entitled to. Hence, while Applicant's action more than fourteen years ago raises lingering concerns as whether Applicant has a preference for Lebanon over the U.S., those concerns have been dispelled by Applicant's countervailing actions that show a singular preference for the U.S. Applicant's travel to Lebanon in 2001, 2001 and 2003 raise no security concerns as he used his U.S. passport, and there is no evidence to indicate or suggest the trips were taken for some purpose contrary to U.S. interests.

Judging by the entirety of the evidence, I find for Applicant under the FI guideline and the whole person concept. The certificates of appreciation, the letters of recommendation, together with his credible testimony, provide focused and compelling accounts of Applicant's topnotch job performance as well as his desire to achieve the overall, mission objectives. Accordingly, it is my predictive judgment that Applicant will reject and report any effort at foreign influence.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Foreign Influence, Guideline B): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the 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 or continue a security clearance for Applicant.

Paul J. Mason

Administrative Judge