

DATE: February 2, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-07549

## DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

### APPEARANCES

#### FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Although not alleged, the Applicant has "expressed a willingness to renounce" his Lebanese citizenship. He has also surrendered his Lebanese passport in compliance with the *Money Memorandum* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudication Guidelines," dated September 1, 2000). The Applicant has four siblings who are citizens of and reside in Lebanon. One brother works for the Lebanese Department of Labor as a low level facilitator. This brother has been approved for permanent residency status in the U.S., and intends to move to the U.S., where this brother's two children attend college. The other three siblings have no connection with any foreign government. The Applicant is not subject to coercion vis-a-vis his foreign relatives. Mitigation is shown. Clearance is granted.

### STATEMENT OF THE CASE

On May 9, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on June 17, 2005.

The case was received by the undersigned on October 20, 2005. A notice of hearing was issued on November 1, 2005, and the case was heard on November 8, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on November 22, 2005. The issues raised here are whether the Applicant's perceived Foreign Preference and alleged Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

## FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 50 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### Guideline B - Foreign Influence

1.a.~1.c. The Applicant has four siblings who are citizens of and reside in Lebanon (Government Exhibit (GX) 1 at pages 3~4). One brother works for the Lebanese Department of Labor as a low level facilitator (TR at page 17 line 24 to page 18 line 6, and at page 28 line 9 to page 32 line 4). This brother has been approved for permanent residency status in the U.S., and intends to move to the U.S., where this brother's two children already attend college (*Id*). The Applicant has another brother who is a "peanut distributor" (TR at page 27 line 15 to page 28 line 8). The Applicant has had no contact with this brother for "about 12 to 13 years" (*Id*). The Applicant has two elderly sisters (TR at page 25 line 17 to page 26 line 20). One is retired from "an insurance company," and the other is a housewife (*Id*). These last three siblings have no connection with any foreign government. The Applicant has traveled to Lebanon in 1998 and again in 2001, to visit his relatives (TR at page 18 line 19 to page 19 line 15, and at page 34 lines 20~23). He intends no future trips to Lebanon (TR at page 32 lines 22~24).

### Guideline C - Foreign Preference

The Applicant came to the U.S. nearly 30 years ago to escape its civil war (TR at page 22 line 5 to page 23 line 13). He attended college in the U.S. and was naturalized as an American in 1984 (*Id*, and GX 1 at page 1). His wife is a native born American as is their child (TR at page 32 line 25 to page 34 line 4).

2.a. and 2.b. The Applicant applied for and was issued a Lebanese passport in 1998 (GX 1 at page 1). He used this passport to enter and exit Lebanon in 1998 and again in 2001 (TR at page 18 line 19 to page 19 line 15). It expired in 2003. However, he has surrendered his Lebanese passport in compliance with the *Money Memorandum* (Applicant's Exhibit (AppX) 8). Although it is not alleged, the Applicant has also "expressed a willingness to renounce" his Lebanese citizenship (TR at page 19 line 16 to page 20 line 21).

### Mitigation

The Applicant's supervisors think most highly of him (AppX 5 at pages 1~2).

## **POLICIES**

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has demonstrated a Foreign Preference or who is subject to a Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

The Applicant is a dual national with Lebanon, and until recently maintained an expired Lebanese passport. The first and second disqualifying conditions under Foreign Preference are therefore applicable as there was an "exercise of dual citizenship," with the "possession . . . of a foreign passport." This is countered, however, by his compliance with the last mitigating condition. Even though it is not alleged, the Applicant "has expressed a willingness to renounce [his] dual citizenship," and he has complied with the *Money Memorandum*, when he surrendered his Lebanese passport. Mitigation is shown. Guideline C is found for the Applicant.

The Applicant's four siblings reside in Lebanon. The first disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of, or resident or present in, a foreign country." However, three of the Applicant's four siblings are not connected with any government, and there is no evidence that their presence in Lebanon can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation vis-avis any of his four siblings (TR at page 24 lines 8~15, and at page 35 line 19 to page 36 line 8). The Applicant's fourth sibling is "connected with . . . a foreign government," as a low level facilitator with their Labor Department. Thus the third disqualifying condition is also applicable. This brother, however, has been approved for permanent residency status in the U.S., and he intends to move to the U.S., where his two children already attend college. This brother's Foreign Influence over the Applicant, if any, is negligible. Mitigation is again shown. Guideline B is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged Foreign Preference and Foreign Influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C

## FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge