

DATE: June 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ADP Case No. 04-10953

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esquire, Department Counsel

FOR APPLICANT

Richard L. Moorhouse, Esquire

SYNOPSIS

Applicant mitigated the foreign influence concerns raised by his family members residing in the middle east by demonstrating that none of them were agents of a foreign government or otherwise situated to be a source of pressure or influence on Applicant. Trustworthiness determination granted.

STATEMENT OF THE CASE

On 9 April 1993, the Composite Health Care System Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD C³I) entered into a memorandum of agreement for DOHA to conduct trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987.

Applicant appeals the 11 July 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial of his trustworthiness determination because of foreign influence.⁽¹⁾ Applicant answered the SOR, and requested a hearing. DOHA assigned the case to me 28 September 2005, and I convened a hearing 27 October 2005. DOHA received the transcript 9 November 2005.

PROCEDURAL ISSUES

At the hearing, I left the record open to give Applicant's counsel an opportunity to provide a sworn statement from a witness who had been present at the hearing, but who had to leave before testifying because of a previously-scheduled medical procedure (Tr. 76-77, 83). Counsel timely provided the statement, to which Department Counsel did not object. Accordingly, I admit the statement as A.E. B.

Applicant's counsel also provided a sworn statement from Applicant's wife, who had not been proffered as a witness at

the hearing, along with a post-hearing argument for its admission. Department Counsel objected on the grounds that the statement exceeded the purpose for which the record was left open. Several exchanges of written argument ensued.

Although I have considerable latitude in what I may accept as post-hearing evidence, regardless of the purpose for which the record was left open, Department Counsel makes valid points regarding the sworn statement of Applicant's wife. The SOR clearly put her citizenship at issue in the case, yet counsel did not arrange for her testimony, either in person or by statement. It would not be appropriate to accept evidence (or argument) that counsel has had the opportunity to tailor to both the evidence produced at hearing (in the form of Applicant's testimony) and Department Counsel's theory of the case (as reflected in Department Counsel's opening statement and closing argument). Consequently, I will not consider either the statement or counsel's argument in resolving this case. I have marked the statement and the parties' respective submissions as Appellate Exhibit (Ap. E.) 1, and placed it in the case correspondence folder.

FINDINGS OF FACT

Applicant--the 40-year-old president and chief operations officer for a company he co-founded in October 1998--seeks access to classified information. He has not previously held a clearance. He admitted the allegations of the SOR. I incorporate those admissions as findings of fact.

Applicant was born in Kuwait in 1964, lived there until he graduated from high school, and received his undergraduate education in the United Kingdom. He graduated in 1987 and immigrated to the U.S. Applicant did not derive Kuwaiti citizenship by his birth in Kuwait, but did derive Jordanian citizenship from his father. He became a naturalized U.S. citizen in May 1993, obtained his U.S. passport in May 1993, and renewed it in May 2003. The company he founded is employed by the U.S. Air Force designing software to track epidemiology rates in patient populations. The work is sensitive, but unclassified.

Applicant's father, a dual citizen of Lebanon and Jordan, worked in Kuwait until 1986 when he retired. Once he retired, Kuwaiti law required him to leave the country, and he returned to Lebanon. Applicant's mother, a citizen of Lebanon, was a life-long housewife who traveled with her husband, first to Kuwait, then back to Lebanon. He is 75; she is 68. Neither has any connection with the government of Lebanon (or, in the case of the father, Jordan). They live in a small village, far from any areas of unrest in Lebanon.

Applicant's brother is a citizen of Jordan residing in the United Arab Emirates (U.A.E.), where he works. Applicant's wife is a citizen of Lebanon, who immigrated to the U.S. in 2000--just before their marriage--and applied for her U.S. citizenship in October 2005, when she first became eligible to apply. She has immediate family members living in Lebanon, but there is no evidence Applicant is especially close to them. None of them are connected to the Lebanese government, or are situated in areas of unrest. Since 1997, Applicant has made several trips to Lebanon to visit his parents. He traveled there in July 2000 to bring his fiancé back to the U.S. He has also traveled to the U.A.E. to visit his brother. He always uses his U.S. passport to travel, as he has no other passports.

Jordan is a constitutional monarchy with a mixed human rights record, but is not invasively involved in monitoring its citizens. Jordan maintains close relations with the U.S., and is not known to be a collector of intelligence or economic information against the U.S.

Lebanon is a nominal democracy with a less-than-perfect human rights record. It has both a long history of civil war and of foreign influence by Syria. Lebanon is not a state sponsor of terrorism, but is a permissive environment for groups recognized by the U.S. as terrorist organizations, which Lebanon considers "freedom fighters" against Israel. The U.S. State Department continues to maintain a travel warning for U.S. citizens contemplating travel to Lebanon. Lebanon is not known to be a collector of intelligence or economic information against the U.S.

U.A.E. is a loose federation of seven emirates (each with its own ruler), militarily weak, and surrounded by several powerful and ambitious neighbors. Its relatively open border and economy have caused problems in proliferation, terrorism, and human trafficking. It has enjoyed friendly relations with the U.S.--including security assistance--since its founding in 1971. U.A.E. is not known to be a collector of intelligence or economic information against the U.S.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽²⁾

CONCLUSIONS

The government established a case for disqualification under Guideline B by demonstrating that Applicant has immediate family members who are citizens of, and/or resident in, various middle eastern countries. ⁽³⁾ However, Applicant's travel to Lebanon (or Jordan or U.A.E.) has no independent security significance under Guideline B. At best, the travel helps establish Applicant's close ties of affection to family, a point not seriously at issue here. Accordingly, I find SOR 1.e. for Applicant.

However, although the government has established a case for disqualification, Applicant has mitigated the security concerns with regard to each category of immediate family. His parents are not agents of a foreign government, and are not so situated as to provide a point of influence on Applicant, thus satisfying Mitigating Condition (MC) 1. ⁽⁴⁾ They have been retired for nearly 20 years to a part of Lebanon not subject to unrest. Further, there is no evidence that the Lebanese government is actively engaged in the collection of U.S. intelligence such that would make Applicant or his parents likely targets for coercion, duress, or influence. The government's evidence explains the links to terrorism that are on-going in Lebanon and the way that those terrorist organizations operate, the increase in terrorism, and the increase in membership in terrorist groups. Several of the groups that are frequently in the news, for example Hizballah and Hamas, operate in Lebanon and practice terrorist acts against Israelis and against U.S. citizens as well as indiscriminate violence in order to draw attention to themselves and increase their membership and their power. There is no indication they use terrorism to gain access to U.S. information. As for his father's Jordanian citizenship, the government has articulated no reason for security concern. In particular, Jordan has a constitutional monarchy with a close relationship to the U.S., including support for the global war on terrorism It does not collect U.S. economic or intelligence information.

In similar fashion, Applicant's wife is a legal permanent resident of the U.S., seeking U.S. citizenship. She has no connection to the Lebanese government, and--residing in the U.S.--not positioned to be pressured or influenced by Lebanon. Further, the government has articulated no reason that her Lebanese citizenship (or her Lebanese relatives) raise security concerns for Applicant, who is not particularly close to his in-laws. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his wife's relatives in Lebanon.

Finally, Applicant's brother is a citizen of Jordan residing in the U.A.E. He has no connections to either government. In addition, the government's evidence on the U.A.E. raise no security concerns relative to Applicant's brother living there,

or on his having Jordanian citizenship. Neither Jordan nor U.A.E. are active collectors of U.S. economic or intelligence information.

The middle east in general, and Lebanon in particular, can be a dangerous place to live. The U.A.E. is a permissive environment for issues of foreign policy concern to the U.S. Even Jordan may present safety or other issues for its citizens or foreign travelers. But more is required before those issues can raise security concerns. The political, economic, racial, and religious unrest in these countries may make them dangerous, unstable places to live. But in order for Applicant's family members to be in a position to be used as a pressure point on him--whether benign or malevolent--there must be a government or other entity ready, willing, and able to collect intelligence and use it. There is no evidence that any of the three countries of potential security significance meet these requirements. Beyond that, the relatives themselves are not positioned to be points of influence. Accordingly, I resolve Guideline B for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: 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 designation of trustworthiness, suitability, and eligibility for Applicant to hold a sensitive Information Systems Position. Trustworthiness determination granted.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. 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;
4. 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 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.