

DATE: August 22, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-11005

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Fahrin E. Hoffman, Esq., Department Counsel

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in Kuwait to Palestinian refugees who held Jordanian citizenship. Applicant's wife, a U.S. citizen, was born in Lebanon to Palestinian refugees and possesses a Lebanese Palestinian travel document. His mother-in-law is a resident of Lebanon and holds a Lebanese-Palestinian travel document. Applicant traveled to Jordan in about 1998 and 2000, and he traveled to Lebanon in 2000, 2001, and 2005. Applicant's familial ties to Jordan and Lebanon raise serious security concerns because they could be exploited by terrorist groups operating inside those countries, resulting in the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 21, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. On January 5, 2006, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on May 31, 2006. I convened a hearing on June 26, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant submitted a written waiver of the 15-day notice provision found at Enclosure 3, subsection E3.1.8. of the Directive. The Government called no witnesses, introduced four exhibits, and offered sixteen documents for administrative notice. Applicant called no witnesses and introduced four exhibits. Applicant's exhibits (Ex.) were marked A through D and were admitted without objection. The Government's exhibits were numbered 1 through 4, and they were admitted without objection. The Government documents offered for administrative notice were numbered I through XVI. The documents identified as I through XV were admitted to the record without objection. I did not admit government document for administrative notice XVI because it was not a U.S. government document expressing U.S. government policy. At the conclusion of the hearing, I left the record open until close of business July 3, 2006, so that Applicant could, if he wished, submit letters of character reference and support from colleagues, supervisors, or

managers. Before the record closed, Applicant submitted letters of recommendation from a manager and a co-worker. These letters were marked as Applicant's Ex. E and Ex. F. Applicant also submitted a memorandum from his wife regarding the status of her Lebanese Palestinian travel document. Applicant's wife's memorandum was marked as Applicant's Ex. G. Applicant's post-hearing submissions were admitted to the record without objection. DOHA received the transcript (Tr.) of the proceeding July 25, 2006.

RULING ON PROCEDURE

Without objection, the SOR was amended to conform with facts elucidated at the hearing. SOR ¶ 1.c. was revised take account of Applicant's father-in-law's death in November 2004 and to recognize Applicant's mother-in-law's residency and citizenship status. As revised, ¶ 1.c. reads as follows: "Your mother-in-law is a resident of Lebanon and holds a Lebanese Palestinian travel document." SOR ¶ 1.d. was revised to add an additional trip Applicant took to Lebanon. As revised, ¶ 1.d. reads as follows: "You traveled to Lebanon in 2000, 2001, and 2005."

FINDINGS OF FACT

The amended SOR contains five allegations of disqualifying conduct under Guideline B, Foreign Influence. In his answer to the SOR, Applicant admitted four allegations and submitted evidence to rebut one allegation. His admissions are incorporated as findings of fact.

Applicant is 35 years old and employed as a technical delivery manager by a government contractor. He became a U.S. citizen in March 1998. Applicant holds a bachelor of science degree in computer science and a master of science degree in project management. He earned both degrees in the U.S. He is married and the father of two small children, (Ex. 1; Ex. 4; Tr. 64.)

Applicant was born and raised in Kuwait, where his father, a businessman, worked in a government ministry and also worked part-time as an accountant. (Tr. 103.) Applicant's father and mother were Palestinian refugees, and they held Jordanian citizenship. After obtaining U.S. citizenship, Applicant did not renounce his Jordanian citizenship. He continues to possess an expired Jordanian passport. He has not renewed his Jordanian passport, and he travels exclusively on his U.S. passport. (Tr. 75; 91; Ex. 2 at 1.)

Applicant's mother and father are U.S. citizens and have U.S. passports. The parents have retained their Jordanian passports. They traveled to Jordan at least once since becoming U.S. citizens. Applicant does not know whether they used their U.S. passports or their Jordanian passports to enter and leave Jordan. (Tr. 102-103.) Applicant has one brother and two sisters, all of whom are U.S. citizens. (Ex. 1.)

Applicant and his wife have been married for approximately seven years. Applicant's wife, who was born in Lebanon to Palestinian refugee parents, became a U.S. citizen on May 30, 2006 and possesses a U.S. passport issued June 23, 2006. (Ex. B. and Ex. C.) She also possesses a Lebanese Palestinian travel document.

Applicant's father-in-law is deceased, and his mother-in-law lives in Beirut and holds a Lebanese Palestinian travel document. In April 2005, the U.S. Embassy in Beirut denied Applicant's mother-in-law a tourist visa to visit her daughter and her family in the U.S. (Tr. 84; 100-101.) Applicant's wife is close to her mother and speaks with her on the telephone once or twice each week. (Tr. 86.) Applicant's wife travels to Lebanon about once a year to visit her mother, and, during those visits, she stays in Lebanon for approximately six weeks. (Ex. 2 at 3.) Applicant's wife intends to surrender her Lebanese Palestinian travel document to responsible Lebanese authorities when she next travels to Lebanon. (Ex. G.)

Applicant's wife has one brother, who resides in the U.S. as a permanent resident and is married to a U.S. citizen. (Tr. 67.) Applicant's wife communicates with her brother by e-mail and telephone once or twice a week. (Tr. 88.) Applicant's wife and her brother will likely inherit interests in property in Lebanon currently held by their mother. (Tr. 106-107.)

Applicant traveled to Jordan in about 1998 and again in 2000. He traveled to Lebanon in 2000, for a ceremony and reception to celebrate his marriage to his wife. He also traveled to Lebanon in 2001 and 2005. (Tr. 76-78; 81-82; 84)

Applicant submitted a letter of recommendation from a former manager who described him as trustworthy and a "skilled technician and a natural leader." (Ex. E.) A former co-worker who served as an officer in the U.S. military described Applicant as worthy of "complete trust and confidence." (Ex. F.)

I take administrative notice of a Consular Information Sheet on Lebanon, current as of May 19, 2006, a Consular Information Sheet on Jordan, current as of May 19, 2006, (3) and a document entitled "Travel Warning: Lebanon." (4) The Consular Information Sheet on Lebanon states that "Americans have been the targets of numerous terrorist attacks in Lebanon" and it advises U.S. citizens who travel to Lebanon to exercise heightened caution when traveling in parts of "the southern suburbs of Beirut, portions of the Bekaa Valley and South Lebanon, and the cities of Sidon and Tripoli" because the terrorist group Hizballah is active in those areas. U.S. citizens are further advised to avoid travel to Palestinian refugee camps in Lebanon where terrorists with links to Al-Qaida have targeted Lebanese, U.S., and other foreign government interests. The Consular Information sheet on Jordan notes that the threat of terrorism remains high in Jordan, and U.S. citizens traveling in Jordan are warned to maintain a high level of vigilance, to vary their times and routes of travel, and to remain inconspicuous.

The State Department Travel Warning on Lebanon, current as of May 19, 2006, urges U.S. citizens to carefully weigh the necessity of their travel to Lebanon in light of recent assassinations and car bomb attacks. The Travel Warning also notes that the U.S. Government considers the potential threat to its personnel assigned to Beirut sufficient to require them to work and live under a strict security regime. The Travel Warning also notes that American air carriers are prohibited from using Beirut International Airport because of concern about aircraft and airport security arrangements. For similar reasons, the Lebanese air carrier is not permitted to fly into the United States.

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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. 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, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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.

CONCLUSIONS

In the amended SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's wife was a citizen of Lebanon and resident in the United States (§ 1.a.); that Applicant's wife possessed a Lebanese Palestinian travel document (§ 1.b.); that Applicant's mother-in-law was a resident of Lebanon and held a Lebanese Palestinian travel document (§ 1.c.); that Applicant traveled to Lebanon in 2000, 2001, and 2005 (§1.d.); and that Applicant traveled to Jordan in about 1998 and 2000 (§ 1.e.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that international terrorist groups are operating in Lebanon and Jordan and are actively targeting American citizens and interests. These hostile actions threaten U.S. security interests. American citizens with immediate family members or close associates who are citizens or residents of Lebanon or Jordan could be vulnerable to coercion, exploitation, or pressure.

Applicant admitted five allegations in the SOR. He denied allegation 1.a. and provided credible evidence that his wife was a U.S. citizen and possessed a U.S. passport. Accordingly, allegation 1.a. of the amended SOR is concluded for Applicant.

However, additional security concerns remain. Applicant's admissions raise security concerns under Guideline B Disqualifying Conditions (DC) E2.A2.1.2.1., E2.A2.1.2.2., and E2.A2.1.2.6. Applicant's mother-in-law possesses a Lebanese Palestinian travel document and resides in Beirut, Lebanon. The presence of this immediate family member in Lebanon raises security concerns under E2.A2.1.2.1. Applicant's wife, with whom he shares his home, has close ties of affection and obligation to her mother, who resides in Lebanon, and she travels to Lebanon annually to spend about six weeks with her mother, raising security concerns under DC E2.A2.1.2.2. and DC E2.A2.1.2.6. In his answer to the, SOR and at his hearing, Applicant acknowledged three trips to Lebanon in 2000, 2001, and 2005 and travel to Jordan in 1998 and 2000. Applicant's wife's continued travel to Lebanon, despite official U.S. travel warnings, could also make Applicant vulnerable under DC E2.A2.1.2.6. to coercion, exploitation, or pressure by groups in Lebanon hostile to the U.S. and its policies.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. Mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's mother-in-law is an agent of a foreign power, she is living in an unstable country where groups with interests antithetical to the United States are not constrained from acting against U.S. interests. Applicant offered no evidence to rebut the Government's assertion that his mother-in-law in Lebanon could be exploited by these groups in a way that could force him to choose between loyalty to her and his wife and the security interests of the United States. (ISCR Case No. 03-15485, at 4-6 (App. Bd. June 2, 2005) Additionally, Applicant failed to demonstrate that his relationship with his wife and her relationship with her mother could not be exploited in a way that could force him to choose between loyalty to his wife and her mother and the security interests of the United States. ISCR Case No. 03-15485, at 4-6 (App. Bd. Jun. 2, 2005)

Foreign connections derived from marriage and not from birth can raise Guideline B security concerns. In reviewing the scope of MC E2.A2.1.3.1., DOHA's Appeal Board has stated that the term "associate(s)" reasonably contemplates in-laws and close friends. ISCR Case No. 02-12760, at 4 (App. Bd. Feb. 18, 2005) Accordingly, MC E2.A2.1.3.1. does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. MC E2.A2.1.3.3. Applicant's contacts with his mother-in-law and his wife's contacts with her mother in Lebanon are based on ties of familial affection or obligation. Applicant's wife's contacts

with her mother are frequent and personal. She speaks on the telephone with her mother once or twice a week, and she spends six weeks visiting her mother in Lebanon each year.⁽⁵⁾ Accordingly, MC E2.A2.1.3.3. does not apply to Applicant's familial relationship with his mother-in-law and with his wife's relationship with her mother. No other mitigating conditions under Guideline B are applicable to Applicant's case.

Nothing in Applicant's answers to the SOR suggested he was not a loyal American citizen and a credit to his adopted country. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism. However, he was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, allegations in subparagraphs 1.b. through 1.e. under Guideline B of the amended SOR are concluded against the Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Prepared by the Bureau of Consular Affairs, U.S. Department of State, and admitted to the record as Government Ex. VII and Government Ex. XIII for Administrative Notice.
4. Dated May 2, 2006 and prepared by the Bureau of Consular Affairs, U.S. Department of State. This document was admitted to the record as Government Ex. XI for Administrative Notice.
5. It was not clear from the record whether Applicant's two small children accompany his wife to Lebanon when she visits her mother.