

DATE: June 27, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-11292

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Edward H Loughran, Esquire Department Counsel

**FOR APPLICANT**

Thomas M Abbott, Esquire

McKenna Long & Aldridge

**SYNOPSIS**

Applicant is a 47-year-old program manager for a defense contractor. He was born in Lebanon, but has lived in the U.S. and became a U.S. citizen in 1984. He has a mother and siblings in Lebanon, but his wife and children are all U.S. citizens and residents. He owns a house in Lebanon, but its value is minimal when compared to his U.S. home and other assets. He has held a security clearance for many years, working in the defense industry, and is highly thought of by his colleagues. He has received security awareness training and strongly avers he will always protect U.S. interests if litigation is shown. Clearance is granted.

**STATEMENT OF THE CASE**

On November 28, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On December 5, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on January 3, 2006. A Notice of Hearing was issued on February 27, 2006, setting the hearing for March 15, 2006. The Government introduced four (4) exhibits (Government's Exhibits (GX) 1 - 4). Applicant testified, and introduced 34 exhibits (Applicant's Exhibits (AX) A - HH). The transcript was received on April 7, 2006.

**FINDINGS OF FACT**

Applicant is a 47-year-old manager for a defense contractor. The February 24, 2005 SOR contains six (6) allegations under Guideline B (Foreign Influence). Applicant admits all allegations, which are accepted and incorporated herein as Findings of Fact. <sup>(1)</sup>

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

***Guideline B (Foreign Influence)***

1.a. - Applicant's mother (73) is a citizen and resident of Lebanon, but now holds a U.S. Permanent Resident Card and makes visits to Applicant in the U.S., the last time being in late 2005 (Response to SOR and Tr at 27, 28). His three sisters, and two brothers remain citizens and residents of Lebanon. His deceased father (2003) was a taxi driver most of his life.

1.b. - Applicant's father-in-law and mother-in-law have immigrated to the U.S. and hold U.S. Permanent Resident Cards. His three brothers-in-law have received approval to immigrate to the U.S. and are awaiting visa numbers. His two sisters-in-law remain citizens and residents of Lebanon. One brother-in-law is a city traffic policeman. Other than that, none of his relatives have any connection with any level of government in Lebanon (Tr at 22).

1.c. - Applicant sends his mother approximately \$500.00 every two to three months, to assist her financially. Lebanon does not have any system like Social Security

1.d. - Applicant owns a home in Lebanon valued at approximately \$78,000.00. His home in the U.S. is worth about ten times that figure.

1.e. - Applicant sent approximately \$35,000.00 to his brother-in-law (a civil engineer) in Lebanon, to construct the home in which Applicant and his family can stay when visiting Lebanon. They own a home in State A worth about ten times that amount.

1.f. - Applicant traveled to Lebanon in 1991 and typically travels there every five years or so to visit his family. His last visit was in August 2005. He visits Lebanon primarily so that his daughters can get to know their uncles, aunts, and cousins. They all have and use only U.S. passports. His passport expires in 2010.

Applicant has been a U.S. citizen since 1984 (AX FF). He served in the U.S. Navy for four years (1986-1990), including a period aboard an aircraft carrier. He was honorably discharged in 1990, and has worked for a Navy civilian contractor ever since, with first a Secret DoD security clearance and then a Top Secret clearance. He began his current employment as a technician, obtained an engineering degree, and eventually became a supervisor and program manager of up to 160 employees, dispersed in at least four locations in the U.S. and Asia (Tr at 18, 20, 21). He last attended and completed a Security briefing in May 2005 (AX BB, and Tr at 19) and no problems of any kind are reflected in the record.

Applicant married his current, Lebanese-born, wife in 1991. She became a U.S. citizen in 1996. She is a nurse at a Veterans Administration hospital. They have two U.S.- born daughters, 10 and 12. Applicant has two grown sons from his first marriage (Tr at 25). The family is deeply involved in American life and education (Tr at 25-27).

None of his relatives in Lebanon are unaware of exactly what he does or that his has a security clearance, or even what that term means. They are aware only that he is an engineer (Tr at 30).

Applicant's employer has given him certificates, awards, and consistently high evaluations (AX A, AX B, AX C, AX D, AX E, and Tr at 19-21). He is financially well off and has significant assets (AX F, AX G, AX H, AX I, AX J, AX K, AX L, AX M, AX N, AX O (the only property in Lebanon, with an estimated value of about \$78,000.00), and AX P. Eleven of his friends and colleagues, many of whom have known him for a decade or more, view him as dependable, a man of integrity, dedicated to the U.S. and U.S. security interests, and worthy of continuing to hold the security clearance he has held for some 20 years, without an apparent problem (AX T-AX Z, and AX CC, AX EE, AX FF, and

AX GG).

## POLICIES

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns 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 conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security." Viewed in an overall context, under E2.2.3. of the Directive, the ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an *overall common sense determination* based upon careful consideration of the following, each of which is to be evaluated in the *context of the whole person*. Explained further below (emphasis added):

*The Whole Person Concept:* Under E2.2.1., the DoD adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: E2.2.1.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence;

An Administrative Judge must also consider the Disqualifying and Mitigating Conditions for the specific Guideline(s) cited in the SOR. In the present case, only Guideline B (Foreign Influence) is alleged.

## CONCLUSIONS

A careful analysis of the SOR and record shows that only Guideline B is alleged, and that the Government's concern is focused not on any questionable conduct by Applicant but, rather, on the fact of his relationships with his relatives in Lebanon.

*Foreign Influence - The Concern:* A security risk may exist 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 United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

*Disqualifying Conditions:* 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; E2.A2.1.2.8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

*Mitigating Conditions:* 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 a way that could force the individual to choose between loyalty to the person(s) involved and the United States.

Several recent Appeal Board decisions have reversed favorable decisions by DOHA Administrative Judges in cases involving fact situations generally similar to, but not identical to, each other and to the present case. These decisions suggest that establishing the validity of Mitigating Condition E2.A2.1.3.1. is extremely difficult, apparently because it necessarily involves proving a negative, i.e., that something of which Applicant may have no knowledge and/or that has not happened in the past will not, or at least is unlikely to, occur in the future

Other Mitigating Conditions have clearly been established: E2.A2.1.3.4. The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required; and E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security, since the property in Lebanon worth about \$78,000.00 is minimal compared with Applicants assets and much larger net worth in the U.S.

It is basic to the adjudication process that the ultimate burden of proof is on the Applicant and that any doubts must be resolved against the granting of a clearance. In this case, there is nothing in the evidence establishing whether or not Applicant's relatives in Lebanon are/may be/might be/could be agents of the Lebanese government or are in a position to be used, voluntarily or not, and knowingly or not, to seek to persuade Applicant to act against U.S. security interests. To the degree that there is a risk, it is a hypothetical one, based primarily on the undisputed presence of the relatives in Lebanon and his warm relations with them. What is absent from the record is any evidence supporting an inference that Applicant would feel "forced" to choose between his loyalty to them and to the United States. In fact, the contrary to shown to be the case.

Anyone with family in other countries has the burden of showing the risk of improper activity is minimal and acceptable. In terms of Applicant's burden of proof, I have considered that Lebanon is not officially recognized as hostile to the U.S., but that it does contain some terrorist and other groups that are not friendly to the United States (ISCR Case No. 01-26893 (October 16, 2002); Directive, Additional Procedural Guidance, Item 15).

There is no suggestion in the record that Applicant would voluntarily act against U.S. security interests. The concern is really that Lebanese authorities might put pressure on his relatives in Lebanon to persuade Applicant to act against U.S. interests. There is some evidence (from Applicant) that his relatives are not agents of a foreign power, but there is no evidence one way or the other as to whether they are susceptible to pressure from the Lebanese government or intelligence agencies, whether they might ask Applicant to act against U.S. security interests (*see*, ISCR Case No. 99-0511 (December 12, 2000) at pp 8, 9; and ISCR Case No. 00-0485 (February 1, 2002) at p.4.

Applicant has a solid record of maturity, integrity, and service to his adopted country. Despite whatever risk may exist solely because he has family members in Lebanon, nothing in the record suggests that he would hesitate before acting instinctively protect U.S. interests. <sup>(2)</sup>

Under the "whole person concept," he has not done or said anything that raises any questions about where his loyalties and dedication lie, nor does the record suggest any reason to deprive the United States of his valuable services. In summary, the record as a whole leads to the conclusion that Applicant has the integrity, good judgment, reliability, and trustworthiness required of anyone seeking a DoD security clearance.

### **FORMAL FINDINGS**

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

*Guideline B (Foreign Influence) For the Applicant*

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. . For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. 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.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**

1. At the hearing, SOR 1.a. was amended to delete the reference to Applicant's father, who is now deceased.
2. In a recent case, the Appeal Board accepted the Judge's "emphasize . . .that Applicant credibly testified that he realized the security implications of his marriage and had repeatedly told his wife in blunt and graphic terms that he would not compromise national security under any circumstances, even if her family members were harmed by the PRC. Applicant has successfully rebutted the normal presumption that an applicant has ties of obligation or affection to his in-laws." The Appeal Board also noted the Judge's acceptance of Applicant's testimony that he had complied with security procedures regarding his trip to the PRC to meet his fiancée. As a result, "the record supports the Judge's conclusions, which are not arbitrary or capricious" (ISCR Case No. 04-06564 (May 30, 2006)). In the same case, the Appeal Board rejected the Government's contention that the Judge's "whole person analysis" was unsustainable. The Appeal Board found that the Administrative Judge had restated some of the Guideline B mitigating factors and presented a reasonable explanation for her decision, given the relevant factors in this case, making the favorable decision sustainable.