

DATE: January 31, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-14502

ECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT

Timothy J. Heaphy, Esq., Christine D. Mehfoud, Esq.

SYNOPSIS

Applicant, a 52-year-old naturalized citizen of the United States, has been employed by the same defense contractor since 1992. He has held a security clearance since October 1996. The foreign influence concerns raised by Applicant's immediate family members' Lebanese residency, citizenship, and presence in Lebanon have been mitigated and do not pose a material security risk. Also, Applicant's attitude and secure ties to the United States establish additional reasons to conclude the foreign influence concerns have been successfully mitigated. Clearance is granted.

STATEMENT OF THE CASE

On February 21, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued a Statement of Reasons (SOR) to the Applicant which detailed reasons under foreign influence (Guideline B) 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. Applicant filed his answer to the SOR on March 14, 2006, and requested a hearing before an Administrative Judge.

The case was assigned to me on July 13, 2006. On August 29, 2006, this case was set for hearing on September 19, 2006. The government submitted 13 exhibits (GE 1-13), and Applicant submitted nine exhibits (AE A-I). Testimony was taken from Applicant and three witnesses. The transcript was received on September 28, 2006. References to the transcript (Tr.) shall be followed by the page number.

RULINGS ON PROCEDURE

At the hearing, the government moved to amend subparagraph 1.a. to read: "Your four sisters and extended family members are citizens and residents of Lebanon." The government also moved to amend subparagraph 1.b. to read: "You have traveled to Lebanon in 95/96, 1997, 1998, 1999, 2001, 2002, 2003, 2004, and 2005 to visit family." Pursuant to

E3.1.17. of Directive 5220.6, both motions were granted (Tr. 185-189).

FINDINGS OF FACT

The SOR alleges foreign influence (Guideline B). Applicant's admissions to the three factual allegations of paragraph 1 shall be incorporated in the factual findings. Applicant is 52 years old and employed as a senior associate engineer with a defense contractor. He began his employment with this contractor in 1992 as a project engineer. He seeks a top secret security clearance. He has held a security clearance since October 1996.

Applicant was born in July 1954 at a location in the mountains about 20 miles northeast of the capital of Lebanon (Tr. 86-87); his four sisters still reside at or near this mountain location at the present time (Tr. 160). Applicant's family is Druze, a religious sect whose members are politically and socially close. This sect and other Christians are located in the northern part of the capital and northeastern Lebanon; whereas the Muslims are located in the southern part of the capital and southern Lebanon (Tr. 86). There is negligible interaction between the two religious groups (Tr. 174).

Applicant immigrated to Canada in 1974 (just before the Lebanese civil war) to advance his education and search for a better life. He enrolled at a Canadian university in the same year. In 1978, he received a bachelor's degree in mechanical engineering, with a specialty in heating, ventilation and air conditioning (GE 1). He received his Canadian citizenship and passport in 1979 or 1980 (Tr. 149-150), along with his engineering certificate authorizing him to work as an engineer in Canada (AE 3). During the Christmas holidays in 1980, Applicant met his soon-to-be wife in the United States (U.S.) (Tr. 94).

After graduating from the Canadian university in 1978, Applicant worked at an engineer consulting firm (Canada) for two years, then moved to another firm for about two years, before working as a residential, consulting engineer for a German company in Saudi Arabia between 1982 and December 1985 (GE 2; Tr. 94). After becoming engaged in May 1982, Applicant married his wife in the local area (U.S.) in June 1983, before returning to his engineering position in Saudi Arabia. Wanting his wife to give birth to their first child in the U.S., Applicant moved to the U.S. in December 1985, and obtained a job with a local engineering firm where he was employed until August 1987.⁽¹⁾ Between November 1987 and September 1992, he was employed as a consulting engineer at another consulting firm in the region that primarily handled U.S. Navy contracts.⁽²⁾

In September 1992, Applicant began working for his current employer as a project engineer. His job involves generating drawings and specifications for the construction of buildings, with a specific focus on embassies.

Applicant became a naturalized U.S. citizen in September 1995. He received his security clearance in October 1996. He has used his U.S. passport exclusively since obtaining it in 1997 (Tr. 153). Between 1998 and January 2006, Applicant traveled abroad 22 times (GE 1; AE E). Sixteen of those trips were either stopover when he traveled to Lebanon (SOR, 1.c.) on either side of a business trip, or actual visits unconnected to business trips. He acknowledged his extensive travels (Tr. 104; AE D). Now that his mother has passed, Applicant does not intend to visit Lebanon in the future because of his family responsibilities and obligations in the U.S., and because he has acculturized himself to the American way-of-life (Tr. 120).

Applicant's four sisters are resident citizens of Lebanon (SOR, 1.a.).⁽³⁾ None are connected to the Lebanese government (Tr. 173-174). Applicant's 64-year-old sister (a homemaker) was born in Lebanon. She and her husband are naturalized U.S. citizens. After owning and operating a restaurant in the U.S. for several years, he and Applicant's 64-year-old sister (who sometimes worked in the restaurant) returned to retire in the family village house about two years ago (Tr. 126; 157). The house (sometimes called a condominium by Applicant) contains two condominiums, with the 64-year-old sister living in the downstairs unit.

Applicant's next oldest sister is 58 years old. She was born in Lebanon and is a resident citizen there. She used to work as a seamstress. She is single and sustains herself in their parents' house from the proceeds of the sale of the mother's condominium (the upstairs dwelling of the parent's house). She lives with another sister who is 48 years of age. The 48-year-old sister, who is married with two children, works at a bank while her husband is a lab technician (Tr. 130).

Applicant's next sister is 56 years old. She is employed as an elementary school teacher. Both she and her husband are resident citizens of Lebanon. Her husband, who is a high school teacher at another Druze village 20 to 25 minutes away, has always provided transportation during all of Applicant's visits. The husband always meets Applicant at the capital airport and transports him to the family village or to the husband's village that is about 20 to 25 minutes away in the husband's Druze village (Tr. 158).

Between 1988 and September 2002 (GE 2), Applicant contacted one of his sisters or his mother about once every two or three weeks. He still maintains the same level of contact (Tr. 136) by calling (by telephone) one of the relatives at a time. The purpose of the calls is to check on everyone's health (*Id.*). Although he has the e-mail capability, he uses the telephone. The purpose of the calls is to find out how they are doing, and to let them know his status. Applicant also talks to them about religion but never politics (Tr. 172-175).

Applicant's extended family members include two first cousins (young girls) who come to see him during his visits to the village (Tr. 168-169). They live in Lebanon in the same village about two blocks away from Applicant's family. Neither of Applicant's two first cousins is employed by the Lebanese government (Tr. 169). Applicant may see his other cousins once every two years (GE 2).

Regarding yearly financial support to his family, Applicant indicated he provided about \$2,000.00 by check (SOR 1.b.) on a yearly basis to his mother and sisters (GE 2) to be used for expenses at the house their mother used to own. In his answer, he stated his money was presented only to his mother, and not his sisters. At the hearing, Applicant explained that he meant to say he sent money to his mother to help defray the cost of medication (Tr. 133-134). He also sent money (checks) to his mother and sisters as gifts (Tr. 165-166). I find he sent checks totaling approximately \$2,000.00 on a yearly basis to his mother and sisters to cover medication /expenses at the family house. I also find he stopped sending any money after he realized the sisters no longer needed the support (Tr. 135). The \$30,000.00 in yearly tuition payments for his children's education was an additional factor in his decision to stop sending money to his sisters (Tr. 132).

Applicant has been married since 1983, but has been separated for the past six months. Applicant's family still lives in the same house they moved into in December 1986 (GE 1). His wife was born in March 1958 in the same Lebanese village as Applicant. She became a U.S. citizen in 1982 (GE 1). She graduated from a regional university. She currently works as a pharmacist in a local hospital (Tr. 130). All three children were born in the U.S. Neither Applicant nor his wife has any personal or financial interests in Lebanon. They do have investments in the U.S. stock market (GE 2).

All of Applicant's four brothers-in-law and sisters-in-law were born in Lebanon, and are naturalized and reside in the U.S. (Tr. 132; GE 2; AE F).⁽⁴⁾ Applicant's mother-in-law and father-in-law were born in Lebanon and are naturalized U.S. citizens, residing in the local area (Tr. 131). His father-in-law is retired and a rental property owner, while his mother-in-law is a homemaker (*Id.*).

Applicant has always reported his Lebanon visits (and trips to other foreign countries) and side trips to his security office. Further, he always kept coworkers advised of his visits to his country of birth (Tr. 170). He has always been security conscious regarding classified information (Tr. 143), and has never violated security regulations. Based on his life experiences, Applicant believes deeply in this country (U.S.), and respects all the opportunities this country has offered him (Tr. 175).

Character evidence. The president of Applicant's employer explained that as an associate, Applicant has supervisory responsibility designing embassy ventilation systems. The president recalled Applicant worked on several structures around the world, and was a major contributor on a project at the U.S. Embassy in Iraq. Based on regular contact with Applicant and his outstanding job performance for 12 to 15 years with no security problems, the president recommends him for a position of trust.

The department production manager has known Applicant since the 1980s, and has worked with him since the early 1990s. The manager has never seen any inappropriate behavior by Applicant on the job or during their two business trips. He recommends Applicant for a position of trust.

A government engineer with 40 years of mechanical engineering experience, employed by the U.S. government to oversee the construction of overseas structures, testified that he and Applicant fortuitously met on a project in approximately 2000 (Tr. 66). After working together all over the world on several projects, the government engineer quickly recognized Applicant's expertise and knack for solving design problems. Applicant and his son have socialized at the government engineer's summer house. The government engineer recommends Applicant for a position of trust.

Ten character statements were presented in support of Applicant's security clearance application. A supervisory associate has worked with Applicant for 14 years, and considers him a gifted and respected engineer. A former coworker of Applicant recalled visiting his family in Lebanon in 2001. Applicant's former supervisor from 1992 to 1998, believes Applicant is highly respected in the engineering field for his attention to detail. A government engineer with the government overseas operations for eight years have worked with Applicant on four projects, and opines Applicant is a real professional. Three other senior engineers who have worked with Applicant on several projects over the years regard him as a competent engineer.

A social contact who has known Applicant for about five years has observed Applicant's strong and active support of "Boy Scout" activities. According to another social friend of six years, Applicant has been an active supporter of his youngest son's school activities.

Between June 2002 and June 2006 Applicant's performance evaluations have been consistently good in primarily all rating categories. The "effective relationships" category was rated lower in earlier years but has since been elevated to "above average." (AE B)

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 Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[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." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Foreign Influence (Guideline B)

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. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual vulnerable to coercion, exploitation, or pressure.

CONCLUSIONS

The Government has established its case under subparagraph 1.a. of the foreign influence (FI) guideline. Applicant has three sisters, two brothers-in-law, and two first cousins who are resident citizens of Lebanon. He has a fourth sister and her husband, naturalized U.S. citizens, who returned to Lebanon two years ago. FI disqualifying condition (DC)

E2.A2.1.2.1. (*an immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*) raises security concerns regarding Applicant's immediate family members. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under the FI guideline. ISCR Case No. 98-0507 (App. Bd. Decision and Reversal Order, May 17, 1999), at 10.

The FI security concerns raised by the foreign location of Applicant's immediate family members may be mitigated when the contacts are infrequent or isolated as defined by FI mitigating condition (MC) E2.A2.1.3.2. (*contacts with foreign citizens are casual and infrequent*). Evidence that an applicant has contacts with an immediate family member in a foreign country raises a rebuttable presumption that those contacts are not casual in nature. ISCR Case No. 00-0484 at 5 (App. Bd. Feb.1, 2002). Due to Applicant's regular contact with his immediate family members, including his numerous trips to Lebanon, FI MC E2.A2.1.3.3. does not apply. However, the inapplicability of this mitigating condition is not the sole determinant of the case. *See*, ISCR Case No. 02-09389 (December 29, 2004) at p. 4.

The security concerns of Applicant's immediate family members' residency, citizenship and/or presence in a foreign country may be potentially mitigated by FI 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) involved and the U.S.)* to allay the security concerns of Applicant's family in Lebanon. The successful application of the condition requires that the relatives in question: (1) are not agents of a foreign power; and (2) are not in a position to be targeted by a foreign power to force Applicant (through coercive or non-coercive means) to act against U.S. interests.

In assessing the applicability of FI MC E2.A2.1.3.1., the political character of the Lebanese government should be considered. Although Lebanon is not hostile to the U.S., the distinction between friendly and hostile governments must be made with caution. History provides examples where relations between sovereignties can change without warning. Even friendly nations have engaged in espionage against the U.S., particularly in economic, scientific and social fields. *See*, ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). In sum, the country's type of government is pertinent in assessing whether applicant's family members are more or less likely to be vulnerable to government coercion. A family member's risk of direct or indirect coercion or pressure is greater if the foreign country has an authoritarian government with a lamentable human rights record, or the country is known to gather intelligence from other countries. Though the country of Lebanon operates under the constitutionally established central government, the country's human rights record continues to receive an unfavorable grade. There are terrorist organizations inside the southern part of Lebanon as well as neighboring governments outside Lebanese borders that continue to undermine legitimate government authority. However, there is no evidence indicating the government of Lebanon is a collector of intelligence or economic information against the U.S. Furthermore, there is no indication the terrorists in the country use their ideology to accumulate U.S. information.

Applicant's sisters and other immediate family members are not agents of a foreign power or connected to the Lebanese government or military. Though not determinative, the absence of evidence that Applicant's sisters or extended family members have ever been subject to duress or coercion by an agent of the Lebanese government (or any foreign government) is relevant in assessing the likelihood of one or more of the family members becoming a target for coercion in the future. Furthermore, Applicant has been to Lebanon on 16 occasions with and without his family. Considering (1) the government of Lebanon is not a collector of U.S. intelligence, and (2) the government of Lebanon has never tried to exploit Applicant's relationship with his family members, the chances of Applicant's family members being a target for indirect or direct exploitation are remote.

While Applicant's numerous side trips or direct visits constitute additional evidence of his ties of affection to his family in Lebanon, the fact he took the trips carries questionable independent significance under any of the other FI disqualifying conditions. He used his U.S. passport for all Lebanese trips. All these were properly reported to security. In all his trips to Lebanon in the past he has been escorted by his brother-in-law to and from the capital airport to the Druze family village in the mountains. He has always remained in the family village interacting with his immediate family.

Though Applicant provided money to his mother and sisters for medication and housing expenses, I conclude that practice has ended. Though there are some inconsistencies in his statements about the how the money was transferred, who it was transferred to, and for what purpose, the discrepancies are not sufficient for me to change my decision that the practice has ended, particularly because of: (1) his mother's passing in January 2006; (2) his realization that his sisters no longer need financial support; (3) his financial obligations to his two oldest children, and (4) the other evidence demonstrating his strong bonds to the U.S. I conclude E2.A2.1.3.1. mitigates the security concerns raised by the residency, citizenship, and/or presence of sisters and extended family members in Lebanon. Accordingly, subparagraphs 1.a., 1.b. and 1.c., and the FI guideline are found in Applicant's favor.

Under the whole person concept, Applicant's ties or connections to the U.S. have steadily grown since December 1985. While working in Canada, Applicant met his wife in the U.S. in December 1980, and married her in the U.S. in June 1983. She had just become a naturalized American citizen in 1982. Her mother and father became U.S. citizens about the same time. (5) He and his wife had their first of three children on American soil in December 1985 when he began his first engineering job in the U.S. Two of the children are presently attending regional colleges, and the third is in middle school. The couple moved into their U.S. home in December 1986 where his family still lives. Following his employment with two U.S. engineering firms, Applicant started working for his current employer in 1992. He became a U.S. citizen in the fall of 1995. In October 1996, he obtained a security clearance, and since that time, he has handled classified projects all over the world for almost 10 years with no security problems. All Applicant's financial interests are in the U.S. Nothing has changed since December 1985 to increase the security risks associated with Applicant's relationships to his family members in Lebanon.

The president of Applicant's employer, the production manager, and the State Department engineer who Applicant has worked closely with on several projects, delivered excellent recommendations supporting Applicant's application for a position of trust. Their collective praise of his job performance and his security vigilance is based on their observations (for up to 14 years) of Applicant during his remote assignments around the world. Based on their opinions (and the opinions in the other character statements) and the entire record, I am confident Applicant will maintain his commendable job performance without any security problems in the future. It is my predictive decision he will also resist and report any foreign effort to influence or pressure him (by coercive or non-coercive means) through his immediate family members who reside in Lebanon. Considering the record evidence, it is my commonsense decision that Applicant's family ties in Lebanon do not pose a material security concern or risk under either the specific guidelines or the general factors of the whole person concept.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

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

Subparagraph 1.a. For the Applicant.

Subparagraph 1.b. For the Applicant.

Subparagraph 1.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. Clearance is granted.

Paul J. Mason

Administrative Judge

1. He was fired from this job for poor communication skills (GE 2).

2. So that he could practice his profession in the U.S., Applicant was required to take two engineering exams in 1988; he successfully passed the exams and received his license in February 1990 (Tr. 98-99). His license displays his birth name "Chaouki Nassib Aboulhosn" and the name "Chuck Hosn," which he legally adopted in May 1989 for business purposes (GE 3).
3. Applicant's mother, a resident-citizen of the country, passed away in January 2006. (SOR, answer; Tr. 123). While alive, she raised seven children as a homemaker. His father, formerly a customs agent processing immigration and naturalization documents, passed away in 1979 (GE 2). A fifth sister passed away in 1993 (AE F).
4. One brother-in-law is employed by the U.S. Navy in a neighboring state (*Id.*)
5. All four brothers and sisters-in-law are naturalized U.S. citizens.