

DATE: October 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-01918

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Candace L. Le'I, Department Counsel

FOR APPLICANT

Michael M. Levin, Attorney At Law

SYNOPSIS

Applicant's foreign preference has been mitigated. He has surrendered his foreign passport and renounced his foreign citizenship from Lebanon. Applicant has complied with the provisions of the oney Memorandum. Clearance is granted.

STATEMENT OF THE CASE

On May 18, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), 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.

The Applicant responded to the SOR in writing on June 2, 2006, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 11, 2006. A notice of hearing was issued on August 2, 2006, scheduling the hearing for August 24, 2006. Applicant Counsel's requested a continuance based upon good cause. Department Counsel had no objection, and the continuance was granted. The hearing was rescheduled for September 19, 2006. At the hearing the Government presented nine exhibits. The Applicant presented two exhibits and testified on his own behalf. The official transcript (Tr.) was received on September 29, 2006.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum with the SOR. (*See* Government Exhibit 3).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 27 years of age and holds a Bachelor's of Science Degree in Engineering. He is employed as an Electrical Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of Lebanon and the United States. He was born in East Beirut, Lebanon and immigrated with his family to the United States in 1995, at the age of fifteen. He became a naturalized United States citizen in 1999. In late 2004, and early 2005, the Applicant traveled to Lebanon for a three week stay, for the purpose of visiting in ailing grandfather. He consulted his company's security officer about his trip, who told him to keep a low profile and to be discreet about the type of work he does. (Tr. p. 19). Instead of using his United States passport, he entered and exited Lebanon with his Lebanese passport that he renewed in October 2004. He re-entered the United States with his United States passport that was issued in September 2004. The Applicant thought he was exercising caution when he chose to use his Lebanese passport instead of his United States passport to travel to Lebanon since fewer questions would be asked by Customs and Immigration officials in Lebanon. (See Applicant's Answer to SOR).

After learning of the provisions of the Money Memorandum, the Applicant decided to renounce his Lebanese citizenship and surrender his Lebanese passport. The Applicant went to the Lebanese consulate and completed the necessary forms and paid the fees to renounce his Lebanese citizenship. He submitted a copy of what he purports is the receipt he received from the Lebanese consulate for renouncing his Lebanese citizenship. The receipt is in Lebanese. (See Applicant's Exhibit A). The Applicant also submitted a copy of the letter he received from the consulate indicating that he has relinquished his Lebanese passport and citizenship. (See Applicant's Exhibit B). On August 7, 2006, the Applicant surrendered his Lebanese passport and renounced his Lebanese citizenship.

When asked why he renounced his foreign citizenship and surrendered his foreign passport, the Applicant stated, "because my Lebanese citizenship doesn't mean anything to me. This is - - the United States is my permanent home. And I have no intentions to return. And it doesn't mean anything to me. I just never thought of it. That why I never took the steps before." (Tr. p. 25).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;

4. Individual has expressed a willingness to renounce dual citizenship.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The 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 predicted 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. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between 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 adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign preference have a direct and negative impact on his suitability for access to classified information.

The Applicant was a dual citizen of Lebanon and the United States who possessed a Lebanese passport. He used his Lebanese passport to travel to Lebanon before he knew that he should not have a foreign passport. Since learning that possession of a foreign passport is not permitted when holding a security clearance, in compliance with the provisions of the Money Memorandum, he surrendered his foreign passport to the Lebanese consulate and relinquished his foreign citizenship. Under the circumstances, the Applicant has done everything possible to be in compliance with the requirements of the directive and the Money Memorandum. Mitigating Conditions (1), *Dual citizenship is based solely on parent's citizenship or birth in a foreign country*, and (4) *Individual has expressed a willingness to renounce dual citizenship* are both applicable. Accordingly, he has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

In addition to the Disqualifying and Mitigating Conditions, I have also considered the "whole person" concept. The Applicant and his family are immigrants from Lebanon. They are now United States citizens and have chosen the United States as their permanent home. The Applicant has no intentions of ever returning to Lebanon for any reason. The Applicant, nor any of his family members for that matter, have ever served in any foreign military service. The Applicant's brother is presently serving in the United States Army and has served in Iraq. The Applicant used his foreign passport with the sole intention of keeping a low profile while visiting his ailing grandfather for the last time in Lebanon. He has surrendered his foreign passport and relinquished his foreign citizenship. He has no loyalty to the Lebanese government. His only loyalty is to the United States and he is committed to making sure that he continues to act at all times with the best interests of the United States in mind. I have taken note of the complex political environment that exists in Lebanon, that includes terrorism, which is one of the most serious threats to peace and security in the United States. Under the particular facts presented in this case, the Applicant has mitigated these concerns.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline C.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant 1.c.: For the Applicant

DECISION

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

Darlene Lokey Anderson

Administrative Judge