

DATE: February 27, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-16858

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Daniel Crowley, Esq., Department Counsel

FOR APPLICANT

Anthony F. Vergnetti, Esq.

SYNOPSIS

Applicant served with distinction as an Arabic language interpreter and translator in Afghanistan and Iraq. While he mitigated Guideline C security concerns, he failed to mitigate security concerns under Guidelines B, E, and J. 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 June 7, 2006, 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 C (Foreign Preference), Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing August 4, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me October 19, 2006.

On December 11, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, submitted nine exhibits for admission to the record (Ex. 1 through 9), and offered four documents containing facts for administrative notice, which were enumerated I through IV. The Government's Ex. 1 through 9 were admitted to the record without objection, as were the facts the Government offered for administrative notice.

Applicant testified on his own behalf and called two additional witnesses. He introduced nine exhibits for admission to the record (Ex. A through I), which were entered into evidence without objection. At the conclusion of the hearing, I left the record open until close of business December 15, 2006, so that Applicant could, if he wished, submit additional documentation to include the surrender of his Lebanese passport and the renunciation of his Lebanese citizenship. On December 15, 2006, Applicant timely filed submissions regarding the surrender of his Lebanese passport and the renunciation of his Lebanese citizenship. Additionally, he filed another document from Applicant's former employer

describing how its employees' security clearance applications are prepared electronically. Applicant's post-hearing submissions, identified as Ex. J, K, and L, were entered into evidence without objection. On December 21, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains three allegations of disqualifying conduct under Guideline C, Foreign Preference, eight allegations of disqualifying conduct under Guideline B, Foreign Influence, six allegations of disqualifying conduct under Guideline E, Personal Conduct, and one allegation of disqualifying conduct under Guideline J, Criminal Conduct. Applicant admitted all allegations under Guideline C. He admitted six allegations under Guideline B, and denied two. He denied the six Guideline E allegations and the one Guideline J allegation. Applicant's admissions are incorporated as findings of fact.

Applicant, an Arabic speaker, is employed by a defense contractor. In 2003, he served as an Arabic translator in Afghanistan. In 2005, he served as an Arabic translator in Iraq. (Ex. G at 13-19.) He seeks a security clearance to do work as a linguist and translator. He is 38 years old, married, and the father of two young children. (Ex. 1; Ex. 2; Tr. 64-65.)

1. Applicant's Family Relationships and Travel

Applicant was born, raised, and educated in Lebanon. He was issued a Lebanese passport in 1987. The passport was reissued in 1992. Applicant renewed his Lebanese passport in 1998. (Ex. 5; 9 at 4.) He became a naturalized U.S. citizen in February 2002. He was issued a U.S. passport on February 22, 2002.

Applicant's family in Lebanon is wealthy. He does not adhere to strict religious practices and prefers a secular Western lifestyle, a choice that has elicited disapproval from certain family members and associates. (Tr. 92; Ex. 9 at 4, 5, 9, 12.)

At the time of his naturalization, Applicant changed his name because he "wanted to have an Americanized name." He kept the first letters of his first, middle, and surname and selected three names he believed sounded American. He thought it would be easier to conduct business in the U.S. if his name were Americanized. Applicant's wife did not join him in the name change, nor did he change the names of his sons, who were born in the U.S. and who bear Lebanese names consistent with Applicant's ethnic and religious traditions. (Ex. 1; Ex.2; Ex. 9 at 1-2.)

Applicant's wife became a U.S. citizen in 1996. Her family immigrated to the U.S. in about 1976, when she was about one year old. Applicant's father-in-law is a U.S. citizen. Applicant's mother-in-law and his wife's brother are residents of the U.S. and citizens of Lebanon. (Tr. 88-89; Ex. 9 at 10.)

Applicant is the second son in a family of five sons and one daughter. His mother, four brothers, and sister are citizens and residents of Lebanon. Applicant is close to his mother and speaks with her on the telephone once or twice a week. She visited Applicant in the U.S. in 1998 and 2000 and resided in his household. Applicant's wife and children traveled to Lebanon in 2004 and stayed with Applicant's mother for approximately 25 days. (Tr. 86, 116, 130; Ex. 9 at 8.)

Three of Applicant's brothers are businessmen in Lebanon. His older brother is a businessman and, over the years, has sent Applicant money for various purposes. The older brother does not approve of the U.S. lifestyle. Applicant speaks with this brother about once every six months. (Ex. 9 at 8.)

Applicant feels especially close to his second businessman brother, who studied at an Arab university in Lebanon and would like to study in the U.S. This brother came to visit Applicant in either 2000 or 2001 and stayed for two months. Applicant speaks on the telephone with this brother about once every two weeks. (Ex. 9 at 9.)

Applicant's third businessman brother lives at home with Applicant's mother. He is ten years younger than Applicant, and Applicant does not feel as close to him as to some of his other siblings. Applicant's fourth brother is a physician. When the fourth brother was an adolescent, he came under the influence of Hezbollah. Applicant's family sent the brother to Moscow in the Soviet Union to remove him from Hezbollah's influence. The brother remained in the Soviet Union for 14 years, completed his medical education, and married a Russian woman. The brother returned to Lebanon with his wife, and he now lives and practices medicine in Lebanon. Applicant feels a certain closeness to this brother

and admires his open-mindedness. He speaks with this brother on the telephone once a month or once every two months. (Ex. 9 at 8.)

Applicant is close to his only sister, who is married to their first cousin, a businessman who who works in his father's automotive company. Applicant speaks with his sister and her husband on the telephone every few months. The sister does not work outside the home and is the mother of two children. (Ex. 9 at 9.)

Applicant's father, who died in 1987, came from a family with origins in the south of Lebanon. He raised his family in a suburb of Beirut. The building in which Applicant's family rented an apartment was burned in a conflict involving Hezbollah in 1988. Applicant's father then built a building containing fifteen apartments, where Applicant's mother and his five siblings continue to live with their families. Two of Applicant's uncles also live in the apartment building built by Applicant's father and named for the family. Applicant's family also owns a summer home in the south of Lebanon. A hospital in the south of Lebanon is named for one of Applicant's distant relatives. (Ex. 9 at 2-3, 8-9.)

After graduating from high school, Applicant studied computer programming at an institution in Lebanon. In 1992, after three years of study, he was awarded a diploma in computer programing. From 1992 to 1997, Applicant was employed by the automobile parts import business owned by his late father and his father's two brothers. His duties included updating and maintaining all company hardware and software, programming and using databases for inventory control, and managing accounts receivable, accounts payable, and payroll. (Ex. 3 at 2; Ex. 9 at 2-3.)

Applicant first came to the U.S. on business in 1993 and stayed for about 45 days. While in the U.S. he traveled to New York and the Midwest and stayed with extended family, business associates, and childhood friends from Lebanon. He returned to the U.S. in 1997 as a business/visitor. He carried with him about \$7,000 to \$8,000 and hoped to stay in the U.S. and become a permanent resident. After three months, his visa expired and he requested an extension to remain in the U.S. His request was granted. Applicant married his wife, a U.S. citizen born in Lebanon, in September 1997. His family in Lebanon wired \$20,000 to his bank account at a Midwest bank so he could pay for the wedding. He paid \$12,000 for his wedding reception. (Ex. 9 at 4-5, 10.)

Between 1998 and 2004, Applicant traveled to Lebanon at least five times. (Ex. 9; Tr. 118.) Additionally, he traveled to Lebanon twice in 2005, once while serving as a contract Arab linguist in Iraq, and once after completing his service in Iraq. Between 1997 and 2002, Applicant traveled to Canada approximately six times to visit a close childhood friend from Lebanon who was a Canadian citizen. Applicant spoke with this friend by telephone when he was serving in Afghanistan. He also traveled to Canada on six occasions to visit cousins who lived in Canada and who subsequently returned to Lebanon. (Ex. 9 at 7-8.) Applicant said he traveled to Lebanon frequently in part because he had been unemployed after coming to the U.S. and did not have insurance to cover his dental care. As a consequence, whenever he needed dental care, he traveled to Lebanon because dental care there was less expensive than in the U.S. (Tr. 95, 117-118)

2. Applicant's Employment, Income, and Financial Obligations

In 1998, Applicant acquired a license to sell insurance in his state of residence. He was employed by an insurance company to collect insurance premiums from February 1998 to June or July 1998. He did not like the work and he quit. He then traveled alone to Lebanon to visit his family. He financed the trip with money remaining after he paid his wedding expenses. He stayed in Lebanon for approximately one month, residing at his mother's apartment. He then returned to the U.S.

In 1998, three of Applicant's brothers in Lebanon took their father's share of the family business and started a new business of importing automobile parts. Applicant was identified as one of the family members with an inherited share in the business. He requested a pay-out of his share. By agreement executed March 16, 2000, Applicant and his brothers agreed his share of the business would be paid out to him through wire transfers from Lebanon. The agreement stated Applicant's share of the partnership business to be \$150,013.16. (3) Pay-outs commenced in January 2001 with a wire transfer of \$2,982. He received another wire transfer of \$4,985 on February 2, 2001, followed by transfers of \$44,985 and \$14,984 on March 13, 2001. Between April 2001 and July 22, 2003, when the final payment was wired to Applicant, Applicant received nineteen additional payments from his brothers in Lebanon. The total amount wired to

Applicant was approximately \$151,244. 33. (Ex. 8.) Because he was often unemployed, Applicant relied on this money for his support. (Ex. 9 at 18.) At his hearing, he denied any current financial interests in Lebanon, and he denied currently receiving money from persons in Lebanon. (Tr. 97, 100.)

Applicant was unemployed from approximately August 1998 to May 1999. In May 1999, Applicant purchased a home for \$99,000. He borrowed the \$10,000 for the down payment from his first cousin, who was living in the U.S. Applicant's older brother in Lebanon provided the money for the repayment of the loan. Applicant was unsure whether his brother sent him the money for repayment or if he gave it to the first cousin's father in Lebanon. (Ex. 9 at 16.) Applicant attended a computer learning center from 1999 to 2000 and acquired a diploma in computer programming. (Ex. 3 at 2.)

From May or June 1999, Applicant took a part-time job in a business owned by a friend of his from Lebanon. Applicant and the friend did not get along because the friend did not approve of Applicant's less than strict religious practices. Applicant left the job at the end of July 1999.

Applicant was then unemployed until April 2000, when he took a job as a computer programmer. In July 2000, his employer asked him to leave, but did not tell him he was fired or why he was being asked to leave. (Ex. 9 at 12.) In approximately July 2000, Applicant traveled alone to Lebanon for two months to visit his family. He also visited Turkey on this trip. (Ex. 9 at 5-6.)

After returning to the U.S., Applicant was employed from October 2000 to December 2000 by a printing service. He left the job because he broke his elbow. Applicant was then unemployed between December 2000 and April 2001. (Ex. 9 at 12; Ex. G at 23.)

On an SF-86 executed in May 2006, Applicant listed employment from April 2001 to October 2001 as a limousine driver. He identified his supervisor as a person he met through his father-in-law. On the SF-86 he signed in April 2003, Applicant listed his employment with the limousine company as lasting from April 1996 to July 2002 and indicated he had been self-employed. In a signed sworn statement, Applicant listed his employment as beginning in June or July 2001 and lasting until September 2001. He stated the inaccurate dates of his employment might be attributed to the fact his employer hired individuals to enter employee data on SF-86 forms after obtaining handwritten SF-86 forms from employees. (Ex. G at 22-23; Ex. 2 at 3; Ex. 9 at 12; Ex. L.)

One of Applicant's cousins from Lebanon suggested Applicant contact an owner of a gas station in his state of residence for employment. The owner of the gas station hired Applicant, and from October 2001 to March 2002, Applicant was employed as a manager of the gas station. The owner offered to rent the gas station to Applicant for \$90,000 plus \$5,000 monthly. Applicant described the financing of the business as follows: "I obtained this money from my family in Lebanon. My brother [name deleted] sent me the money in installments, via wire transfer. The remaining money [the brother] gave to [the owner's family] in Lebanon, at [the owner's request] amount unknown." The owner sold the gas station to another party and offered to sell Applicant his interest in a second gas station. (Ex. 9 at 11.)

The arrangement soured when Applicant learned the man he had been dealing with lacked authority to rent or sell shares in the second gas station. When the gas station began to lose money and the proprietor was unable to meet his monthly rental payment to the lessor and actual owner, the actual owner sued to remove the proprietor, a partner, and Applicant from the property. Applicant was named as a defendant in the civil suit brought by the owner. By stipulated judgment, Applicant, the proprietor, and the proprietor's cousin agreed to turn over the gas station to the actual owner and to forfeit any money paid toward a purchase agreement. (Ex. 7 at 1-2.)

Applicant was again unemployed from March 2002 to July 2002. (Ex. G at 21.) He traveled to Lebanon in April 2002, remaining in the country for about 90 days. (Ex. 9 at 6.)

After returning to the U.S., Applicant was unemployed in November and December 2002. In January 2003 to May 2003, he financed an automobile through an equity line of credit and worked as a limousine driver. He closed the business and sold the automobile in May 2003 after obtaining work as an Arab linguist.

As an employee of a government contractor, Applicant served as an Arabic translator for U.S. forces in Afghanistan

from May 2003 to August 2003. He returned to the U.S. in August 2003 because one of his children was sick. In October 2003, he returned to Afghanistan and served there until December 2003. Applicant worked with classified information in Afghanistan. Sometimes, he called his wife in the U.S., and she would initiate a three-way call with Applicant's family in Lebanon. (Ex. 9 at 13-14.)

While in Afghanistan, Applicant reported to his supervisor that he thought some of his contacts in the U.S. might have been involved in credit card fraud and cigarette smuggling. He speculated that the owner of the gas station, with whom he had legal difficulties, might have been sending money to Hezbollah. (Ex. 9 at 14-15.) At his hearing, Applicant denied any association with individuals who supported Hezbollah. He also denied having a relative who drove a car bomb into a squad of Israeli soldiers in 1995, killing nine of the soldiers. He acknowledged the car bomber's Lebanese surname was the same as his, and he also noted that many people in Lebanon carry that surname. (Ex. C; Tr. 91-95.)

After returning to the U.S. from his service in Afghanistan, his employer recommended him for assignment to a position at a Defense agency. The agency did not approve Applicant, and he was told by his employer that he was not assigned because he had a foreign passport and was a dual citizen. (Ex. 9 at 15.) Applicant was unemployed for one month, from January to February 2004. He was then employed as an Arab linguist for two months. From April 2004 to January 2005, Applicant was again unemployed. In December 2004, he traveled to Lebanon to visit his family. (Ex. G at 15 to 18; Tr. 118.)

From January 2005 through December 2005, Applicant was employed by a defense contractor as an Arab linguist in Iraq. Applicant provided two witnesses who worked with him in Iraq and who testified to Applicant's patriotism and exceptional competence as a linguist and translator under difficult circumstances. (Tr. 48-62, 137-152.) Applicant also provided several letters of support and commendation from officials who worked with him in Iraq. (Ex. H.)

In the summer of 2005, while serving in Iraq, Applicant had problems with his teeth. He was granted permission by his supervisors to fly to Lebanon for dental treatment. Applicant also traveled to Lebanon in December 2005, after completing his service in Iraq. Applicant was unemployed from January 2006 until May 2006, when he was hired by his present employer, a defense contractor. (Ex. G at 12-14.)

3. Applicant's Citizenship, Passports, and Travel Documents

Applicant was interviewed by an authorized investigator on April 1, 2003, and he completed and signed a Counterintelligence (CI) and Security Screening Questionnaire - Middle East. In response to specific inquiries on the questionnaire, Applicant denied possessing a foreign passport or other documents issued by a foreign country. He also denied using a foreign passport or other document issued by a foreign country to obtain legal entry into another country. He denied dual citizenship but had not renounced his Lebanese citizenship. (Ex. 1, CI and Security Screening Questionnaire at 2-3.) He signed the following statement: "I do not plan on renewing my Lebanese passport and I do not intend to maintain my Lebanese citizenship." (Ex. 1, CI Security Screening Questionnaire- Middle East-Questionnaire Continuation Sheet, page 12 of 12.)

Applicant stated he not traveled under his Lebanese passport since November 2002. (Tr. 76.)

Applicant was not sure when his Lebanese passport expired. In a signed, sworn statement executed on January 28, 2004, he speculated it expired in late 2002 or early 2003. Applicant told the authorized investigator who interviewed him on April 1, 2003 that he no longer had his Lebanese passport because in March 2003 his wife had inadvertently put the passport through the laundry. He did not explain further what had happened to the passport. (Ex. 1, CI Screening Questionnaire, at 1; Ex. 9 at 4.)

At his hearing, Applicant introduced a personal letter from an employee of a Defense agency who stated Applicant had mailed his Lebanese passport to her in 2004 with the request that it be turned over to authorized investigators in that agency who were investigating Applicant's eligibility for employment. The employee said she had turned the passport over to the authorized investigators. After reviewing the passport, the investigators returned the passport to the employee. She took it home and put it in a file cabinet with the intention of returning it to Applicant, but did not do so. (Ex. A.)

Applicant testified he contacted the employee and requested that his Lebanese passport be returned to him. He received his Lebanese passport from the employee on December 8, 2006. (Tr. 78.) He presented the passport for examination at his hearing. I examined the passport carefully and concluded that it was degraded and looked as if parts of it had been wet. However, it did not show obvious signs of water damage, which might have occurred if it had been washed in a washing machine. (Tr.79-84.) A color photo copy of the passport was made, and it was entered in the record as Ex. K. Exhibit K consisted of the red passport cover and pages 1 through 3, 6 through 11, and 46 through 48. The passport's expiration date was not found on any of the pages of Ex .K.

After acquiring his U.S. passport in 2002, Applicant used his valid Lebanese passport to enter and exit Lebanon in about April 2002, and again in about October-November 2002. As a U.S. citizen, he also used a Lebanese identification card to enter Syria in April 2002. Applicant used his Lebanese passport in preference to his U.S. passport in order to save the \$50 fee he would have been required to pay if traveling with his U.S. passport. (Tr. 75-77.)

In August 2006, Applicant appeared at the Office of the Counsel General of Lebanon near his home state and presented a letter stating he renounced his Lebanese citizenship and did not wish to exercise dual citizenship. He returned his Lebanese identification card and requested confirmation that the card has been received by the Counsel General. The Counsel General returned to Applicant a letter stating the identification card had been received. (Tr. 73-74; Ex. B.)

After Applicant received his Lebanese passport from the employee of the Defense agency, he made arrangements to surrender the passport to authorized officials at the Lebanese Embassy. I left the hearing record open so that Applicant could submit evidence he had surrendered the passport. (Tr. 78-85.)

Applicant timely filed a document from the Embassy of Lebanon reciting that he had surrendered his Lebanese passport on December 12, 2006, and had paid the requisite fee for doing so. The document also acknowledged receipt of Applicant's application to renounce his Lebanese citizenship. The document, signed by an Embassy official, stated: "[Applicant's] complete application was examined and is under process." (Ex. J.)

4. Applicant's Security Clearance Application

On April 1, 2003, Applicant was interviewed by an authorized investigator. He completed and signed a Counterintelligence (CI) Security Screening Questionnaire - Middle East. A section entitled U.S. Security Clearance Questionnaire contained the following question:

1. Do you possess a passport or other documents (cedula, etc.) issued by a country other than the United States?

Applicant responded "no" to Question 1. (Ex. 1, U.S. Security Clearance Questionnaire, at 2.)

At his hearing he said he answered "no" because "my passport was expired and [had] been washed by mistake, and I believed I'm not holding a foreign passport." He said he did not disclose he had a Lebanese identification card because he did not think it was proof of citizenship. (Tr. 105.)

Before the interview, on about March 31, 2003, Applicant executed a security clearance application (SF-86) at the request of the defense contractor who was considering employing him. The SF-86 was attached, in part, to the Government's Ex. 1, and it was also offered and admitted as Applicant's Ex. F. That employer decided not to hire Applicant. Approximately two weeks later, Applicant applied to work for a second defense contractor, and he gave the second prospective employer a copy of the SF-86 he had completed on March 31, 2003, at the request of the first employer. (Tr. 106.) The March 31, 2003 SF-86 admitted as Ex. F was unsigned and appears to be a draft, to which Applicant, in certain places, added hand-written information. The Government's Ex. 1, also a partial copy of the March 31, 2003, contains annotations by the authorized agent who interviewed Applicant on April 1, 2003.

The SF-86 Applicant prepared March 31, 2003, responded to Questions 12, 15, 16, and 40 as follows: Question 12 on the SF-86 reads as follows: "**Your Foreign Activities - Property.** Do you have any foreign property, business connections, or financial interests?" Applicant responded "no" to Question 12. (Ex. F at 8.)

Question 15 on the SF-86 completed by Applicant on March 31, 2003, reads as follows: "**Your Foreign Activities -**

Passport. In the last 7 years, have you had an active passport that was issued by a foreign government?" Applicant responded "yes" to Question 15 and supplied additional requested information. He identified the issuing country as Lebanon, and he speculated the issue date of the passport was January 1997 and the expiration date was December 2002. In a "Remarks" section, he stated: "This passport was destroyed in the washing machine. I do not remember the issue date or the expiration date." (Ex. F at 8.)

Question 16 on the SF-86 reads as follows: "**Foreign Countries You Have Visited.** Have you traveled outside the United States on other than official U.S. Government orders in the last 7 years? (Travel as a dependent or contractor must be listed. Do not repeat travel covered in modules 4, 5, and 6." Applicant responded "yes" to Question 16. He listed a trip to Lebanon and Turkey in 1998, a trip to Lebanon and Turkey in 2000, and two trips to Lebanon in 2002. On the version annotated by Applicant, apparently before giving it to his second prospective employer, he wrote: "I had multiple trips to Canada to visit my cousin in Toronto and my friend in Ot[t]owa." (Ex. F at 8.)

Question 40 on the SF-86 reads as follows: "**Public Record Civil Court Actions.** In the last 7 years, have you been a party to any public record civil court actions not listed elsewhere on this form?" Applicant responded "yes" to Question 40. He listed the date of the civil suit identifying him as a party in the gas station purchase dispute. He identified the court, county, and state in which the suit was brought. (Ex. F at 11.)

The second prospective employer took the SF-86 prepared by Applicant on March 31, 2003, and annotated by him, and gave it to staff who were charged with preparing an electronic version of the SF-86 on the employer's data base (Ex. L.) On April 16, 2003, Applicant was presented with and electronically signed the SF-86 prepared by the second prospective employer. On this version of the SF-86, dated April 17, 2003, Applicant's answer to Question 12 was "no." His answer to Question 15 was "no." His answer to Question 16 was "no," and his answer to Question 40 was "no." (Ex. 2; Tr. 106-107.)

Question 18 on the April 17, 2003 SF-86 asks if an applicant is a male born after December 31, 1959: Applicant's answer is "yes." Question 18 then inquires: "Have you registered with the Selective Service System?" The answer on Applicant's SF-86 is "no." Under the "Remarks" section for Question 18 appears the statement: "when he came to the US he was 27 years old [.]" (Ex. 2 at 7.)

The facility security officer for the second employer provided a letter for the record describing the process used by its employees in completing security clearance applications:

...[O]ur practice is to have employees provide us with the information responsive to the questions on the SF 86 and then [Employer's] Security Department personnel inputs that information into the electronic version of the SF 86 for submission to the appropriate U.S. Government agency. This is the practice that was in place when [Applicant] submitted his SF 86 in March 2003. While I have no direct information regarding [Applicant's] SF 86 and his file has been subsequently destroyed because he has been termed for more than 2 years, I can say that our practice has resulted in incorrect information unintentionally being inputted on the electronic SF 86 on a few occasions. (Ex. L at 1.)

Applicant acknowledged he failed to check the SF-86 prepared by his second employer for accuracy before he signed it electronically. He attributed his failure to being rushed to get ready for deployment. (Tr. 121-122.)

The following security clearance applications were admitted as exhibits offered by the Government: Counterintelligence (CI) and Security Screening Questionnaire, signed April 1, 2003 (34 pages); Electronic Standard Form 86 (SF-86), dated April 17, 2003 (11 pages); Electronic Standard Form 86 (SF-86), dated February 5, 2005 (16 pages). The following security clearance applications were admitted as exhibits offered by the Applicant: Standard Form 86, dated March 31, 2003 (21 pages); Questionnaire for National Security Positions (SF-86 Format), dated May 23, 2006 (53 pages).

I take administrative notice of the following facts: Lebanon and the U.S. have a long-standing friendly relationship. It has been the policy of the U.S. to help Lebanon preserve its independence, sovereignty, national unity, and territorial integrity. (Background Note: Lebanon, Government Document I containing facts for administrative notice.)

Lebanon is 95% ethnic Arab. The population of Lebanon is comprised of various Christian groups, Muslim sects, and

Druze. The three largest population groups are Shi'a and Sunni Muslims and aronite Christians. The most significant terrorist group in Lebanon is Hezbollah. Hezbollah derives its power and influence from Lebanon's Shi'a community, which makes up about one-third of Lebanon's population. The Lebanese government recognizes Hezbollah as "a legitimate resistance group." Hezbollah maintains offices in Beirut and elsewhere in the country and has elected deputies in Lebanon's Parliament. It also operates a comprehensive system of health and education services in several parts of the country. Even though Syria withdrew its military forces from Lebanon in April 2006, it maintains a covert intelligence presence in Lebanon and offers support for and smuggles arms to Hezbollah and Palestinian terrorist groups operating in Lebanon. The Lebanese government's inability to exercise authoritative control in the Hezbollah-dominated south of Lebanon and inside Palestinian-controlled refugee camps enables terrorists to operate freely in Lebanon. In July 2006, Hezbollah rocket attacks against Israel and the capture of two Israeli soldiers prompted large-scale Israeli bombing of Hezbollah positions and Lebanese infrastructure, especially in the south. (United States Department of State, Office of the Coordinator for Counterterrorism: Country Reports on Terrorism 2005: Lebanon, pages 139-141, Government Document II containing facts for administrative notice; Congressional Research Service, CRS Report for Congress: Lebanon, Updated August 15, 2006, Government Document III containing facts for administrative notice, Summary.)

Because of the serious threat of terrorism, especially in the south of Lebanon, the U.S. Department of State has issued a Travel Warning for Lebanon and urges U.S. citizens to defer non-essential travel to Lebanon and to avoid all travel to areas south of the Litani river. Visas are required for all U.S. citizens seeking to enter Syria. The U.S. Government considers the potential threat to U.S. government personnel assigned to Beirut sufficiently serious to require them to live and work under strict security conditions. (United States Department of State, Bureau of Consular Affairs, Travel Warning, September 18, 2006, Government Document for Administrative Notice IV at 1-2.)

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. 2, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

In addition to the guidelines in the Directive, official DoD policy guidance must also be considered. Of particular relevance in this case is an August 16, 2000, memorandum from Assistant Secretary of Defense Arthur L. Money (Money Memorandum) clarifying the application of Guideline C, Foreign Preference, to cases involving an applicant's possession or use of a foreign passport.

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

Guideline C - Foreign Preference

In the SOR, DOHA alleged, and Applicant admitted, that he exercised dual citizenship with Lebanon and the United States (¶ 1.a.); that he used his Lebanese passport to enter into Lebanon in about April 2002 and/or October 2002, after becoming a naturalized U.S. citizen on February 4, 2002 (¶ 1.b.); and that he possessed a Lebanese identification card that he used to enter Syria in at least April 2002 (¶ 1.c.).

A Guideline C security concern exists when an individual's conduct indicates a preference for a foreign country over the United States. A preference for another country could lead a person to provide information or make decisions that are harmful to the interests of the United States.

In his answer to the SOR, Applicant admitted dual citizenship with Lebanon, a condition that could raise a security concern under Disqualifying Condition (DC) E2.A3.1.2.1 of Guideline C. Additionally, Applicant admitted using his Lebanese passport to enter Lebanon in about April 2002 and October 2002, after he became a naturalized U.S. citizen on February 4, 2002. Applicant's use of his Lebanese passport after becoming a U.S. citizen and after acquiring a U.S. passport raises a security concern under DC E2.A3.1.2.2. His use of a Lebanese identification card to enter Syria in April 2002 in lieu of his U.S. passport also raises a security concern under DC E 2.A3.1.2.2.

There are several possible Mitigating Conditions (MC) that can be weighed against Guideline C disqualifying conditions. Because dual citizenship as a status is not disqualifying under Guideline C, itigating Condition (MC) E2.A3.1.3.1.might apply if a U.S. citizen's dual citizenship is based solely on his parents' citizenship or birth in a foreign country.

The exercise of dual citizenship raises security concerns under Guideline C. One manifestation of the exercise of dual citizenship is the possession or use of a foreign passport, and by extension, a foreign identity card, in preference to a U.S. passport. Possession and use of a foreign passport may be a disqualifying condition under ¶ E2.A.3.1.2.2. of Guideline C. In a memorandum (Money emo), dated August 16, 2000, Assistant Secretary of Defense Arthur L. Money stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United State Government.

Applicant presented no evidence that he had been granted approval by the U.S. government to use a Lebanese passport or to acquire and use a Lebanese identification card. Evidence of such approval might have provided mitigation under MC E2.A3.1.3.3.of Guideline C.

Dual citizenship may also be mitigated under MC E2.A3.1.3.4. if an individual expresses an willingness to renounce dual citizenship. Applicant expressed his willingness to renounce his Lebanese citizenship. In an interview with an authorized investigator on April 1, 2003, Applicant signed a statement which read: "I do not plan on renewing my Lebanese passport and I do not intend to maintain my Lebanese citizenship." In August 2006, he presented a letter to an

official of the Lebanese government in the U.S. in which he renounced his Lebanese citizenship and surrendered his Lebanese identity card. In a post-hearing submission, he presented credible evidence that he had renounced his Lebanese citizenship, surrendered his Lebanese passport to authorized officials of the Lebanese government, and paid the fee levied by the government of Lebanon for taking these actions. Accordingly, Applicant mitigated security concerns under Guideline C and demonstrated compliance with the policy guidance articulated in the Money Memorandum.

Guideline B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's mother is a citizen and resident of Lebanon (¶2.a.); that Applicant's sister and four brothers are citizens and residents of Lebanon (¶ 2.b.); that Applicant's mother-in-law and brother-in-law are citizens of Lebanon and residents of the United States (¶¶ 2.c. and 2.d.); that Applicant has extended family members who are citizens and residents of Lebanon (¶ 2.e.); that Applicant traveled to Lebanon at least five times from about October 1998 to at least November 2004 (¶ 2.f); that Applicant had been associated with individuals who were involved with illegal activities and/or allegedly using money to support Hezbollah (¶ 2.g.); and that Applicant had a relative who drove an explosive-laden car into a squad of Israeli soldiers in May 1995, killing nine, and as a result, a hospital associated with Hezbollah had been named in the relative's honor (¶ 2.h.).

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 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 the government of Lebanon regards Hezbollah, a supporter of international terrorism, as a legitimate resistance group. Additionally, the political climate of Lebanon hinders the government's ability to prevent terrorist actions by Hezbollah which are hostile to the interests of the United States. These hostile actions by Hezbollah directly threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of Lebanon could be vulnerable to coercion, exploitation, or pressure.

Applicant admits the Guideline B allegations at ¶¶ 2.a through 2.f. of the SOR. His admissions and the record evidence raise security concerns under Guideline B, Disqualifying Condition (DC) E2.A2.1.2.1., DC E2.A2.1.2.2., and DC E2.A2.1.2.6. Applicant's mother and five siblings are residents and citizens of Lebanon, and he has extended family members, specifically his sister's husband as well as uncles and cousins, who are citizens and residents of Lebanon. Applicant shares his home with his wife, a U.S. citizen whose mother and brother are citizens of Lebanon. Applicant sees his in-laws once or twice a week. These facts raise security concerns under DC E2.A2.1.2.1. and E2.A2.1.2.2. of Guideline B and could subject Applicant to adverse foreign influence or duress.

In 2004, Applicant's wife and two young children traveled to Lebanon and stayed in Applicant's mother's home for almost a month. In addition, Applicant made five trips to Lebanon between 1998 and 2004, and he also traveled to Lebanon to visit family twice in 2005. Applicant's frequent travel to Lebanon raises security concerns under DC E2.A2.1.2.6. because it is conduct that could make him vulnerable to coercion, exploitation, or pressure by a foreign government.

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 United States. Mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's mother-in-law, his wife's brother, his mother, his five siblings, and his extended family members in Lebanon are agents of a foreign power, they are in a position to be exploited by individuals or groups in Lebanon with interests antithetical to the United States, and those hostile foreign interests could force Applicant to choose between loyalty to his family members and the United States. (ISCR Case No. 02-13595, at 4-5 (App. Bd. May 10, 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 is an attentive and devoted son, brother, and family member. He speaks with his mother on the telephone once or twice a week, and he communicates with his siblings regularly. His contacts with his family members in Lebanon are based on ties of familial affection or obligation and are neither casual nor infrequent. Since becoming an Arabic translator for a defense contractor in 2003, he has visited his family in Lebanon three times, and he made arrangements to speak with his mother and other associates by telephone from Afghanistan and Iraq. Accordingly, MC E2.A2.1.3.3. does not apply to Applicant's relationships with his family members in Lebanon.

Applicant denied the SOR allegation at ¶ 1.g. that he had been associated with individuals who were involved with illegal activities or allegedly using money to support Hezbollah. He also denied the SOR allegation at ¶ 1.h. that one of his relatives in Lebanon drove a car bomb into a squad of Israeli soldiers in 1995, killing nine of the soldiers, and that subsequently Hezbollah renamed a hospital in honor of Applicant's relative. In his signed sworn statement, Applicant speculated that some of his associates in the U.S. might have been involved in illegal activities. No other evidence was introduced to substantiate Applicant's speculations. Applicant also strongly denied that he was related to the car bomber, and the Government provided no evidence to support the allegation. The record showed that the SOR allegation at ¶ 2.g. was framed as a fact and was drawn from Applicant's unsubstantiated speculations about some of his associates, as expressed in his signed, sworn statement. Applicant's denial of the allegation was credible. Additionally, the Government presented no evidence in support of SOR allegation ¶2.h., which Applicant credibly and categorically denied.

Applicant's allegiance, loyalty, and patriotism are not at issue in this proceeding. 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 my conclusions, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. However, after a thorough review of the record, I conclude Applicant failed to put forward evidence that could mitigate the security concerns alleged in ¶¶ 2.a. through 2.f. of the SOR and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant raised concerns under Guideline E, Personal Conduct, when, on or about April 1, 2003, he falsified his answer on a U.S. security clearance questionnaire by denying he possessed a passport or other documents issued by a country other than the United States, when, in truth he possessed a Lebanese passport due to expire in about 2003 and he also possessed a Lebanese identification card. (¶3.a.)

Additionally, DOHA alleged that Applicant's personal conduct raised security concerns when he falsified material facts on a SF-86 he executed and submitted electronically on April 17, 2003 when he denied, in response to Question 12, that he had any foreign property, business connections, or financial interests, when, in truth he had received and was still receiving thousands of dollars in wire transfers from his interest in his family's business located in Lebanon (¶ 3.b.). DOHA also alleged Applicant falsified material facts in his answer to Question 15 on the April 17, 2003 SF-86 when he denied possessing an active passport issued by a foreign government in the last seven years, when, in truth, he had possessed a Lebanese passport reissued to him in about 1998 (¶ 3.c.).

DOHA further alleged in the SOR that, during the course of his security clearance investigation, Applicant offered conflicting accounts about his Lebanese passport, which he claimed expired in 2003 and which he also stated had been destroyed in a washing machine in January 2003 or March 2003. DOHA also alleged that Applicant denied holding the passport since December 2002 and that he had surrendered it to a Defense agency or to an individual who worked at the agency, and that the passport had not been returned to him (¶ 3.d.).

DOHA also alleged Applicant falsified material facts on his April 17, 2003 SF-86 when he denied, in response to Question 16, that he had traveled outside the United States on other than official U.S. government orders in the last 7 years (¶ 3.e.). DOHA also alleged Applicant falsified material facts in his response to Question 40 on the April 17, 2003

SF-86 by answering "no" and deliberately failing to list that he had been named a defendant in a civil lawsuit filed against him in approximately 2002. (¶ 3.f.).

Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The conduct alleged in SOR allegations 3.a, 3.b., and 3.d., raises security concerns under Disqualifying Condition (DC) E2.A5.1.2.2. (4), DC E2.A5.1.2.3. (5), E2.A5.1.2.4. (6), and E2.A5.1.2.5. (7) of Guideline E. On April 1, 2003, Applicant completed a Counterintelligence (CI) and Security Screening Questionnaire - Middle East - and was interviewed by an authorized investigator. The following question was posed to him: "Do you possess a passport or other documents (cedula. etc.) issued by a country other than the United States?" Applicant answered "no." At his hearing, he explained he denied having a foreign passport because his passport was expired and had been washed in the laundry. He said he denied possessing a Lebanese identification card because he did not think it was proof of citizenship. Applicant's answers lacked credibility, and the record showed that when Applicant answered the question, he was in possession of the two documents. Thus, his answer to the investigator's questions was deliberately misleading and raises a security concern under DC E2.A5.1.2.3.

On the SF-86 he completed on March 31, 2003, and on the SF-86 he signed electronically on about April 17, 2003, Applicant responded "no" Question 12, which asked: "Do you have any foreign property, business connections, or financial interest?" At the time he answered "no" to Question 12, the record shows Applicant was receiving payments of thousands of dollars each month from his brothers in Lebanon. That money represented Applicant's connection with and financial interest in a family business in Lebanon. I conclude Applicant's denial of business or financial interests in a foreign country was deliberately untruthful and raised a security concern under DC E2.A5.1.2.2.

During his security clearance investigation, Applicant provided conflicting accounts about the status and location of his Lebanese passport issued in approximately 1998. DOHA alleged in SOR ¶ 3.d. that Applicant's conflicting accounts raised a security concern under Guideline E. On his March 31, 2003 SF-86, he said the passport had been "destroyed in the washing machine" and he no longer remembered when it had been issued or when it expired. On April 1, 2003, in his security interview, he told the investigator he did not have the passport anymore. In his signed, sworn statement of January 2004, he said the passport was "unreadable" after being washed, accidentally, in the washing machine. At his hearing, Applicant provided a letter from an employee of a Defense agency who stated Applicant had given her the passport in 2004 and that she had not returned it to him. Applicant produced the passport at his hearing and said he had received it in December 2006 from the employee at the Defense agency, who had neglected to return it to him. Applicant did not explain where his passport was between 2003, when he claimed it was destroyed and he no longer had it, and 2004, when he sent it to the Defense agency employee. Applicant deliberately provided false and misleading information concerning a relevant and material matter to an investigator during his security clearance investigation, thus raising a security concern under DC E2.A5.1.2.3. His concealment of relevant information about the status and whereabouts of his Lebanese passport also raises security concerns under DC E2.A5.1.2.4. and E2.A5.1.2.5.

Two Guideline E mitigating factors might be applicable to SOR allegations 3.a., 3.b., and 3.d. Mitigating Condition (MC) E2.A5.1.3.2. might apply if a falsification is an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. MC E2.A5.1.3.3 might apply if the individual made prompt, good faith efforts to correct the falsification before being confronted with the facts. The evidence established that the falsifications were multiple and not isolated. They occurred recently. While Applicant provided some information at later times, he did not come forward with the information but provided it incrementally over time. Accordingly, MC E2.A5.1.3.2 and E2.A5.1.3.3. are inapplicable.

The Government also alleged in SOR ¶¶ 3.c., 3.e., and 3.f. that Applicant deliberately falsified his answers to Questions 15, 16, and 40 on the SF-86 he signed on April 17, 2003. Part of Applicant's arch 31, 2003 SF-86 was included in Government Ex. 1. As his Ex. F, Applicant produced a draft, unsigned SF-86, dated March 31, 2003, which he said he prepared for his first prospective employer and then later gave to his second prospective employer to use in preparing an electronic version of his SF-86. The Government's exhibit did not include Questions 15, 16, and 40. Applicant's draft SF-86 provided full, true, and complete answers to Questions 15, 16, and 40. On his April 17, 2003 SF-86, which he

signed, Applicant answered "no" to questions 15, 16, and 40. The SOR alleged in ¶¶ 1.c., 1.e., and 1.f. that Applicant's "no" answers were deliberate falsifications. In rebuttal, Applicant called attention to the answer to Question 18 on the SF-86 he signed electronically on April 17, 2003. The answer referred to Applicant in the third person and provided information about his age when he came to the U.S. Additionally, Applicant offered a letter from the second employer's facility security officer stating errors were sometimes made when clerks transcribed answers prepared by applicants to the electronic versions of their SF-86s. However, the security facility officer had no records to establish or verify that any errors occurred in the preparation of Applicant's electronic security clearance application.

Applicant acknowledged signing the April 17, 2003 version of his SF-86. He said he failed to review it carefully because his employer was rushing him to get ready to deploy. Applicant's evidence credibly rebuts the Government's allegations that he deliberately falsified his answers to Questions 15, 16, and 40 and shows he accurately and truthfully answered those questions on the draft form he gave to his employer. While the conduct alleged by the Government raised security concerns under DC E2.A5.1.2.2., Applicant provided credible evidence in rebuttal that he lacked the intent or state of mind required to conclude he falsified the April 17, 2003, security clearance. Accordingly, there is no need to discuss extenuation or mitigation. *See* ISCR Case No. 00-0302 at 4 (App. Bd. Apr. 23, 2001.)

Guideline J - Criminal Conduct

In ¶ 4.a. of the SOR, DOHA alleged Applicant's deliberate material falsifications to conceal unfavorable information on his Counterintelligence and Security Screening Questionnaire, his security clearance applications, and in his interviews with authorized investigators constituted criminal conduct under section 1001 of Title 18, United States Code. Under section Title 18, Section 1001, of the United States Code, it is a felony crime to knowingly make a materially false, fictitious, or fraudulent statement to a department or agency of the Federal government. The burden of proof required in analyzing relevant conduct under Guideline J and Guideline E is "substantial evidence," which is less than the "beyond a reasonable doubt" standard. *See* ISCR Case No. 02-07555, at 3 (App. Bd. Jul. 19, 2004.)

The evidence showed Applicant did not intentionally falsify his answers to Questions 15, 16, and 40 on his SF-86. The evidence also showed Applicant deliberately falsified his answer to a question on the U.S. Security Clearance Questionnaire relating to his possession of a foreign passport and identity card, and he deliberately falsified his answer to Question 12 his SF-86 by denying foreign business connections or financial interests. He also deliberately provided conflicting accounts about the status and whereabouts of his Lebanese passport and identification card during the course of his security clearance investigation. Applicant's deliberate falsifications raise security concerns under Disqualifying Conditions (DC) E2.A10.1.2.1. and E2.A10.1.2.2. of Guideline J. His pattern of falsification constitutes criminal activity and raises doubts about his judgment, reliability and trustworthiness. ¶ E2.A10.1.1. A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nevertheless security worthy.

Applicant's deliberate falsifications were recent and occurred in 2003 and 2004. This conduct was recent. The falsifications were not isolated events but instead demonstrated a pattern of criminal conduct. Thus, neither Mitigating Condition (MC) E2.A10.1.3.1. nor MC E2.A10.1.3.2. of Guideline J applies to Applicant's Guideline J conduct. Additionally, Applicant's denial of responsibility for the conduct precluded a finding that MC E2.A10.1.3.6. was applicable. No other mitigating conditions apply to the facts of Applicant's case.

Whole Person Analysis

Paragraph E2.2 of the Directive requires that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct (E2.2.1.1); the circumstances surrounding the conduct, to include knowledgeable participation (E2.2.1.2); the frequency and recency of the conduct (E2.2.1.3); the individual's age and maturity at the time of the conduct (E2.2.1.4.); the voluntariness of participation (E2.2.1.5.); the presence or absence of rehabilitation and other pertinent behavioral changes (E2.2.1.6); the motivation for the conduct (E2.2.1.7); the potential for pressure,

coercion, exploitation, or duress (E2.2.1.8.); and, the likelihood for continuation or recurrence (E2.2.1.9)

Applicant's colleagues and supervisors attested to his fine work in Afghanistan and Iraq as an Arabic linguist. They acknowledge Applicant has made a substantial contribution to national security. At his hearing, Applicant spoke movingly and persuasively of his loyalty to the U.S. as his adopted country.

In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), DOHA's Appeal Board stated that an administrative judge's whole person analysis, when Guideline B allegations are involved, must give special weight to situations where an applicant "has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which an applicant . . . made a significant contribution to the national security." The Appeal Board recognized that an applicant's conduct under such conditions can give credibility to his assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation. ISCR Case No. 05-03846 was concerned only with Guideline B allegations.

Although he has been a U.S. citizen since 2002, Applicant retains very close ties with family and associates in Lebanon, and his Lebanese relationships are at the center of his life. He traveled to Lebanon seven times between 1998 and December 2005, and his wife and children visited his family in Lebanon in 2004. When he had trouble with his teeth while serving in Iraq as an Arab linguist, he obtained permission to leave Iraq and to fly to Lebanon to see his dentist. Applicant acknowledges his decision to adopt a secular Western lifestyle is disapproved by some of his relatives and associates in Lebanon and some of his Lebanese contacts in the U.S. By his frequent travel to Lebanon, a country in turmoil, and by his on-going contact with individuals who do not respect his choices, he exposes himself to the possibility of adverse foreign influence and coercion. This creates concerns about his safety and his ability to protect classified information.

Since coming to the U.S. in 1997, Applicant has held a number of short-term jobs. He has been unemployed at least eight times and has suffered substantial business losses. Applicant's family in Lebanon is wealthy. For a period of many years, Applicant's immediate and extended family in Lebanon has provided him with money presumably generated by the family business. Between 2001 and 2003, approximately \$150,000 was distributed to Applicant by his brothers as his pay-out share of the family business. On other occasions, Applicant sought loans or the repayment of loans from his Lebanese contacts in the U.S. or from his family in Lebanon. His reliance on his family in Lebanon for money raises additional concerns about his vulnerability to coercion and exploitation.

Applicant's lack of candor in accounting for the whereabouts of his Lebanese passport raised security concerns about his credibility and trustworthiness. His failure to acknowledge in March and April of 2003 that he had an on-going financial interest in Lebanon also raised security concerns.

Because the federal government has a compelling interest in protecting classified information, it must be able to place a high degree of trust and confidence in individuals granted access to classified information. An applicant who deliberately tries to deceive or mislead the federal government does not demonstrate the high degree of judgment, reliability and trustworthiness required of those granted access to classified information. Applicant's lack of candor and conflicting testimony regarding the status and whereabouts of his Lebanese passport demonstrated a serious negative security concern.

I have carefully reviewed the record in this case, and I have weighed and evaluated all of Applicant's conduct in light of the whole person standard. I conclude the three Guideline C allegations for Applicant. I conclude Guideline B allegations ¶¶ 2.a. through 2.f. against Applicant. I conclude Guideline B allegations ¶¶ 2.g and 2.h. for Applicant. I conclude Guideline E allegations 3.c., 3.e., and 3.f. for Applicant, and Guideline E allegations 3.a., 3.b., and 3.d. allegations against Applicant. I conclude the Guideline J allegation against Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including

the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended.

FORMAL FINDINGS

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

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2.h.: For Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: For Applicant

Subparagraph 3.d.: Against Applicant

Subparagraph 3.e.: For Applicant

Subparagraph 3.f.: For Applicant

Paragraph 4. Guideline J: AGAINST APPLICANT

Subparagraph 4.a.: 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. The agreement, entered in the record as Applicant's Ex. E, was executed in Arabic and translated into English by Applicant. Applicant elsewhere estimated his share in the business to be \$180,000. (Ex. 9 at 3.)
4. DC E2.A5.1.2.2. reads: "The deliberate omission, concealment, or falsification of relevant and material facts from any personal security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."
5. DC E2.A5.1.2.3. reads: "Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination."
6. DC E2.A5.1.2.4. reads: "Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail."
7. DC E2.A5.1.2.5. reads, in pertinent part: "A patten of dishonesty or rule violation...."