DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 07-17679
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Emilio Jaksetic, Esq., Department Counsel
For Applicant: William F. Savarino, Esq.

December 30, 2008

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Decision

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and C (Foreign Preference). Eligibility for continued access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on July 10, 2006. On May 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guidelines B and C. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant received the SOR on June 6, 2008; answered it on June 25, 2008; and requested a hearing before an administrative judge. DOHA received the request on June 30, 2008. Department Counsel was ready to proceed on September 30, 2008, and the case was assigned to me on October 2, 2008. DOHA issued a notice of hearing on October 16, 2008, scheduling the hearing for November 4, 2008. At Applicant's request, the hearing was postponed until November 13, 2008, and I convened the hearing on that date. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified on his own behalf, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) 1 through 21, which were admitted without objection[1]. The record closed on November 4, 2008. DOHA received the transcript (Tr.) on November 21, 2008.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Lebanon. The request and the documents attached as enclosures were not admitted in evidence but are attached to the record as Hearing Exhibit (HX) I. I took administrative notice as requested, with no objection by Applicant. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in SOR with explanations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 61-year-old electrical engineer. He has been the president, chief operating officer (CEO), and facility security officer of his own company, a defense contractor, since June 1988 (Tr. 71). He first received a clearance in January 1985, while employed by a defense contractor and still a citizen of Lebanon (AX 20). His company has held a facility clearance since May 1989 (AX 2) and has passed every security inspection from that date until the date of the hearing (AX 3-13; Tr. 73).

Applicant was born in Lebanon in November 1947. He obtained a bachelor's degree in civil engineering in Lebanon in 1970. He studied in France from 1972 to 1980 at a public university affiliated with the ministry of defense, obtaining a master's degree in naval architecture, and doctorates in fluid mechanics and mathematical sciences. He came to the U.S. in 1980, applied for permanent residence in 1982, and became a U.S. citizen in December 1987. In January 1985 he married a native-born U.S. citizen whom he met in 1973, while they were both studying in France.

When Applicant went to France to continue his education, he initially intended to return to Lebanon, but after the civil war in 1975, he decided to look for "another life."

[1] The usual convention is to letter an applicant's exhibits. However, Applicant's counsel submitted the exhibits with numbered tabs, and I chose to retain his numbering system rather than substitute letters for numbers.

The combination of meeting his U.S.-born wife and a job offer from a defense contractor motivated him to come to the U.S. (Tr. 65).

Applicant's spouse is an employee of the U.S. government and holds a top secret clearance with access to sensitive compartmented information (Tr. 42). She also does administrative work on weekends for Applicant's company (Tr. 41). She and Applicant both work with classified material in their respective jobs but they never discuss their work (Tr. 44-45). She testified Applicant's brother in the U.S. worked for Applicant's company until the late 1990s when they had a falling out, and they are now estranged and have no contact (Tr. 47-48, 78). She also testified Applicant's family members know he is a scientist but they do not know he does work for the U.S. government (Tr. 49).

Applicant and his spouse own their home in the U.S., and their equity in the home is about $1.5 million. His total assets in the U.S., including his company, are worth about $5 million. He has no assets in Lebanon (Tr. 95).

One of Applicant's 16 employees who has had daily contact with him testified that the company has protocols for handling sensitive information and enforces them (Tr. 32). He has never seen Applicant treat sensitive information carelessly (Tr. 33). He has heard Applicant mention his Lebanese family in passing, but he knows little about them (Tr. 34-36).

Applicant retained his Lebanese passport after becoming a U.S. citizen as a precaution to avoid harassment at roadside checkpoints in Lebanon, but he never found it necessary to use it (Tr. 84, 88, 105). When he entered and exited Lebanon, he showed both his U.S. and Lebanese passports, and immigration officials stamped his Lebanese passport (Tr. 88, 103). In October 2008, he renounced his Lebanese citizenship and surrendered his Lebanese passport to the Embassy of Lebanon (AX 16-19). Although the instructions from the Lebanese embassy stated that he should give a reason for renouncing his Lebanese citizenship, he declined to do so because he believed that disclosing the reason (to retain his clearance) would be contrary to the interests of the U.S. (Tr. 91). As of the date of the hearing, Applicant had not yet been notified of Lebanon's decision to accept his renunciations of citizenship (Tr. 120).

Applicant's mother, two brothers, and two sisters are citizens and residents of Lebanon. A third brother is a citizen of Lebanon permanently residing in the U.S. Applicant disclosed his family members in Lebanon and his travel to visit them on his security clearance applications in 1984, 2004, and 2006 (GX 1; AX 20 and 21). He disclosed his Lebanese passport on his 2004 and 2006 applications. He was unaware of the security concerns raised by his passport until he received the SOR.

Applicant is close to his mother and two sisters. His mother is a housewife, and he calls her every two or three weeks. He has been sending his mother about $15,000 a year for the past three or four years (GX 2 at 4; Tr. 55, 82). He sends the money by wire transfer to his mother's account with a bank in Beirut (Tr. 108, 111). His mother is

diabetic and virtually bedridden (Tr. 50, 76). He testified he would continue his financial support of his mother "as long as there is nothing that forbids [him]" and "if it's not illegal." He is confident his siblings would assume responsibility for her support and care if he were required to stop sending her money (Tr. 81-82, 125). One of his sisters is a housewife whose husband works in a cement factory, and he talks to her once or twice a month. The other sister is a schoolteacher whose husband is a retired housing inspector, and he talks to her about once a month (GX 2 at 5; Tr. 56, 107). Applicant's mother and two sisters live in a small, predominantly Christian town in northern Lebanon situated about 30 or 40 miles north of the center of terrorist activity in Beirut (Tr. 77-78). Applicant has visited his family in Lebanon four times in 30 years, each time for about a week (Tr. 83). The last visit was in July 2004 (GX 1 at 8).

Applicant testified he is not close to his two brothers in Lebanon. He has telephonic contact about twice a year with one brother in Lebanon, an architect; and telephonic contact about once a year with his other brother in Lebanon, a schoolteacher (GX 2 at 4-5). His contact with these two brothers is limited to holiday greetings. He has no contact with his estranged brother who resides in the U.S. (GX 2 at 5). None of Applicant's family members have any association with the Lebanese government (Tr. 80).

Applicant frequently attends international scientific conferences as well as classified conferences sponsored by defense agencies. He has authored numerous scientific articles, and several of his publications were co-authored by foreign nationals. They include several co-authored by employees of his company who were citizens of Taiwan, Korea, Russia, and India permanently residing in the U.S. (Tr. 115-16), and others articles co-authored by professors and students who are citizens of France (Tr. 116).

I take administrative notice of the following adjudicative facts about Lebanon. Lebanon is a parliamentary republic that became independent in November 1943. The U.S. policy is to maintain its traditionally close ties with Lebanon and to help preserve its independence, sovereignty, national unity, and territorial integrity. Since its independence, Lebanon's national policy has been determined by a small group of regional and sectarian leaders. Political institutions often play a secondary role to religion and personality-based politics. Lebanon has been in a state of war with Israel since 1973. Civil war broke out in April 1975 and did not end until 1991. Since 1992, Lebanon has experienced social and political instability, economic uncertainty, lack of infrastructure, violent clashes with Israeli forces, and political assassinations.

I also take administrative notice that Lebanon's foreign policy and internal policies are heavily influenced by Syria, which maintains intelligence agents in Lebanon and is a state sponsor of terrorism. The unstable political situation in Lebanon enables foreign terrorist organizations to operate within its borders. Hezbollah is the most prominent terrorist group in Lebanon, and it has been designated by the U.S. Department of State as a "Foreign Terrorist Organization." The Lebanese government recognizes Hezbollah as a legitimate resistance group and political party. Hezbollah

maintains offices in Beirut and elsewhere in Lebanon, is closely allied with Iran, supports a variety of violent anti-Western groups, and has been involved in numerous anti-U.S. terrorist attacks. Hezbollah seeks to obtain U.S. technology, has been involved in several efforts to obtain restricted, dual-use technology, and is considered by the U.S. to be the most technically capable terrorist group in the world.

Finally, I take administrative notice that Lebanon has a poor human rights record and has been ineffective in controlling terrorism and political violence. Lebanese security forces have engaged in arbitrary arrest, murder, torture, and other abuses. There is an atmosphere of governmental corruption and lack of transparency. Militias and non-Lebanese forces operating outside the area of Lebanese central government authority have used informers and monitored telephones to obtain information about their perceived adversaries. Ongoing political violence and terrorism directed at Americans and U.S. interests make Lebanon dangerous for U.S. citizens.

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 have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication 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 may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein 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. 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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The SOR alleges Applicant's mother, two brothers, and two sisters are citizens and residents of Lebanon (SOR ¶¶ 1.a, 1.b, and 1.d), and that one of his brothers is a citizen of Lebanon permanently residing in the U.S. (SOR ¶ 1.c). The security concern under this guideline is set out in AG ¶ 6 as follows:

> Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Two disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition may be raised by "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." AG ¶ 7(a). Second, a disqualifying

condition may be raised by "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information." AG ¶ 7(b).

The "heightened risk" required to raise AG ¶ 7(a) is a relatively low standard. It is satisfied if the risk raised by the citizenship or presence of family members in a foreign country is greater than it would be if they were not citizens or residents of the foreign country. Where family ties are involved, the totality of the family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Applicant has very limited contact with his two brothers in Lebanon. Nevertheless, there is a rebuttable presumption that contacts with an immediate family member are not casual, and Applicant has not rebutted that presumption. *See* ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant's family ties to Lebanon are sufficient to raise AG ¶¶ 7(a) and (b), shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Security concerns under this guideline can be mitigated by showing that "the nature of the relationships with foreign persons, the country in which these persons are

located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S." AG ¶ 8(a).

Applicant's family members live in a Christian enclave north of Beirut, away from the center of Hezbollah influence. They have low-profile lives, and they do not know that Applicant works on defense-related projects. They have no contact with the scientific or high-technology community. On the other hand, Applicant's brilliant career and international reputation make him a high-visibility target for direct or indirect pressure. While there does not appear to be a high risk of pressure being exerted on Applicant through his family, the evidence is insufficient to establish that it is unlikely. I conclude Applicant has not established AG ¶ 8(a).

Security concerns under this guideline also can be mitigated by showing "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶ 8(b). Applicant's loyalty to the current government of Lebanon appears to be minimal, but his loyalty to his family, especially his mother, is far above "minimal."

On the other hand, Applicant has deep and longstanding relationships and loyalties in the U.S. He has resided in the U.S. for almost 30 years, held a clearance for 24 years, held U.S. citizenship for 21 years, and has been married to a native-born U.S. citizen for 24 years. His spouse is a government employee with a high-level security clearance. Almost all his professional career has been in defense-related work. All his considerable assets are in the U.S. When he learned his dual citizenship and Lebanese passport raised security issues, he promptly renounced his Lebanese citizenship and surrendered his passport. When asked about his financial assistance to his mother, he indicated he would terminate it if it were forbidden or illegal. I am convinced Applicant would resolve any conflict of interest in favor of the U.S. interest. I conclude AG ¶ 8(b) is established.

Guideline C, Foreign Preference

The SOR alleges Applicant held a valid Lebanese passport after becoming a U.S. citizen (SOR ¶ 2.a). The concern under this guideline is as follows: "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." AG ¶ 9. A disqualifying condition may arise from "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen," including but not limited to "possession of a current foreign passport." AG ¶ 10(a)(1).

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, "the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions." ISCR Case No. 98-0252 at 5 (App. Bd. Sep 15, 1999). Applicant's possession and use of a Lebanese passport raises AG ¶ 10(a)(1), shifting the burden to him to refute, explain, extenuate, or mitigate the facts.

Security concerns under this guideline also may be mitigated by if "the individual has expressed a willingness to renounce dual citizenship." AG ¶ 11(b). Security concerns based on possession or use of a foreign passport may be mitigated if "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated." AG ¶ 11(e). Applicant's written renunciation of his Lebanese citizenship and delivery of that renunciation and his Lebanese passport to the Embassy of Lebanon establishes both of these mitigating conditions.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guidelines B and C in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant was candid, sincere, and credible at the hearing. He has dedicated much of his scientific career to supporting the national defense of the U.S. He left Lebanon before the civil war and decided to never return. He has lived 38 of his 61 years in the U.S. and has held a clearance since 1985 without incident. Starting with his first security clearance application in 1984, he has been candid and forthright about his connections to Lebanon, his dual citizenship, and his possession of a Lebanese passport. Although previous favorable determinations do not estop the government from

denying an application to continue a clearance, Applicant's history of candor, reliability, and trustworthiness while holding a clearance is relevant. His security profile has not changed since he was first granted a clearance, except to the extent that his ties to the U.S. have strengthened and he has renounced his Lebanese citizenship and surrendered his passport.

After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence and foreign preference. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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LeRoy F. Foreman
Administrative Judge