



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 08-05732

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

June 30, 2009

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On November 19, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR (undated), and requested a hearing. The case was assigned to me on February 18, 2009, and was scheduled for hearing on March 25, 2009. For good cause shown, the scheduled hearing was continued, and rescheduled for April 14, 2009. A hearing was convened on the rescheduled date, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's

case consisted of two exhibits; Applicant relied on one witness (himself) and six exhibits. The transcript (R.T.) was received on April 22, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is granted.

Besides its two exhibits, the Government requested administrative notice of 14 documents: *Background Note: Lebanon*, U.S. Department of State (January 2009); *Country Specific Information, Lebanon*, U.S. Department of State (August 2008); *Travel Warning, Lebanon*, U.S. Department of State (September 2008); *Country Reports on Human Rights Practices - 2007, Lebanon*, U.S. Department of State (March 2008); *Country Reports on Terrorism, Chapter 2 - Country Reports: Middle East and North Africa Overview*, U.S. Department of State (April 2008); *Country Reports on Terrorism, Chapter 3 - State Sponsors of Terrorism Overview*, U.S. Department of State (April 2008); *Country Reports on Terrorism, Chapter 6 - Terrorist Organizations*, U.S. Department of State (April 2008); *United States Condemns Violence in Lebanon*, U.S. Department of State (May 2008); *Remarks after Meeting with Lebanese Parliamentary Speaker Nabih Berri*, U.S. Department of State (June 2008); *Terror Attack in Lebanon*, U.S. Department of State (August 2008); *United States Condemns Car Bomb Attack in Lebanon*, U.S. Department of State (September 2008); *Bus Bombing in Tripoli*, U.S. Department of State (September 2008); *Naji Antoine Abi Khalil Sentenced to 60 Months Imprisonment for Attempting to Export Military Night-Vision Equipment to Hizballah*, U.S. Department of Commerce (February 2006); *Michigan Man Pleads Guilty to Supporting Hizballah*, U.S. Department of Justice (November 2007).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292, at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875, at 2 (App. Bd. Oct. 12, 2006)(citing ISCR Case No. 02-18668, at 3 (App. Bd. Feb. 10, 2004)). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the contents of the above-named background reports addressing the geopolitical situation in Lebanon, and other facts pertinent to national security considerations in the country. Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports. Applicant exercised his option of challenging these documents.

Procedural Issues and Rulings

Before the close of the hearing, Applicant requested leave to supplement the record to afford him an opportunity to provide documentation of his surrendered expired Lebanese passport, his community involvement in the U.S., Lebanese sponsored tourist encouragement, and UN developments in its investigation of the 2005 assassination of then prime minister Rafiq Hariri, and written character endorsements. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded three days to respond. Within the time permitted, Applicant e-mailed his

affidavit concerning his surrender of his passport and intention to renounce his Lebanese citizenship, confirmation of his surrender of his passport to his facility clearance officer (FSO), UN materials covering Lebanon developments, endorsements and biographical materials, which were, in turn, furnished me by Department Counsel. Department Counsel did not object or provide rebuttal documentation. Applicant's submissions are admitted as Applicant's exhibits G through O.

Summary of Pleadings

Under Guideline C, Applicant is alleged to (a) have exercised dual citizenship with Lebanon and the U.S., (b) possess an expired Lebanese passport, and (c) unwilling to renounce his Lebanese citizenship.

Under Guideline B, Applicant is alleged to have (a) a father who is a citizen and resident of Lebanon, (b) two sisters who are citizens and residents of Lebanon, (c) a brother who is a dual citizen of Canada and Lebanon who resides in Saudi Arabia, and (d) traveled to Lebanon on average of at least once per year.

For his answer to the SOR, Applicant admitted to his being a dual citizen of Lebanon and the U.S. and possessing an expired Lebanese passport. He also admitted to having immediate family members who are citizens and residents of Lebanon, and a brother who is a dual citizen of Canada and Lebanon. And he admitted to traveling to Lebanon on average at least once per year. Applicant added no explanations or affirmative claims to his answer.

Findings of Fact

Applicant is a 49-year-old program manager for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born in Lebanon and immigrated to the U.S. in 1980 to pursue his education (R.T., at 53-55). Aided by financial assistance from his parents, he earned a bachelors degree with highest honors from an accredited U.S. university in 1982 and a master of science degree in 1985 (see exs. 1 and B; R.T., at 56). He currently owns a limited liability company that is certified by his state (see ex. F; R.T., at 72). He documents a lengthy history of involvement in federal programs (see ex. A; R.T., at 69-70) and property ownership in the U.S. (see ex. E; R.T., at 64, 71).

Applicant became a naturalized U.S. citizen in September 1999 and acquired a U.S. passport the same month and year (see ex. 1; R.T., at 53-55). He used his Lebanese passport to enter and exit Lebanon before he obtained his U.S. passport. Since obtaining his U.S. passport, he has never used his Lebanese passport (R.T., at

55). His Lebanese passport was issued in September 1992, and was renewed in August 1997 (see ex. 1). It expired in August 2002.

Applicant retained his old Lebanese passport for many years after its expiration (see ex. 3; R.T., at 73). He found it in old papers and did not retain for any intentional reasons (R.T., at 73-74). He documents his surrendering his Lebanese passport to his facility clearance officer (FSO) in April 2009 (see ex. I). In the past, he has declined to renounce his Lebanese citizenship. He assures (accepted) he was never asked to renounce his Lebanese citizenship by U.S. State Department officials. To successfully renounce his Lebanese citizenship, he would need to demonstrate a conflict of interest with his U.S. citizenship. He did indicate at hearing his willingness to renounce his Lebanese citizenship should it become necessary to obtain his security clearance (R.T., at 8). In his post-hearing affidavit, though, he confirmed his willingness to unconditionally renounce his Lebanon citizenship (see ex. G).

Applicant's mother was a citizen and resident of Lebanon before her death in 2006 (R.T., at 57, 74). His father is 86 years of age and is a citizen/resident of Lebanon. He currently resides with Applicant's eldest sister in the Christian sector of Beirut (R.T., at 80, 90).

Applicant has two sisters who are citizens and residents of Lebanon. His oldest sister is unmarried, works for a Lebanese construction firm, and spends much of her time caring for their father (R.T., at 62). His youngest sister is married, has four children, and is a homemaker (R.T., at 62). Her husband is employed in the construction business and has no known connections to the Lebanese government.

Besides his two sisters, Applicant has two brothers (R.T., at 60-61). His oldest brother is a dual citizen of Lebanon and Canada and currently resides in Saudi Arabia (R.T., at 61, 81). He works for a British insurance company and has no relationships of any kind with the Lebanese government (R.T., at 60-61). His youngest brother is a dual citizen of the U.S. and Lebanon and resides in the U.S. He has worked for most of his career for a major U.S. corporation and is currently on assignment in Korea (R.T., at 61). His wife is a homemaker and has no associations with any members of the Lebanon government (R.T., at 61-62).

None of Applicant's immediate family members (*i.e.*, his father and siblings) residing in Lebanon have served in the Lebanon military, participated in Lebanese civil wars, or been imprisoned or detained (R.T., at 82). Applicant himself does not know any one associated with a non-government organization (NGO) in Lebanon.

Since becoming a U.S. citizen, Applicant has made several trips to Lebanon to visit his parents and siblings. He traveled to Lebanon in 2007 to see his family, and stayed with his family during his visit (R.T., at 73-74). In 2006 he traveled to Lebanon to attend his mother's funeral (R.T., at 74). Because of his father's poor health (Alzheimer's), he may need to see him in the near future (R.T., at 56-57, 88). Besides

his trips to Lebanon, Applicant speaks to his sisters and brothers monthly (R.T., at 83-84). He has aunts in Lebanon, too, that he keeps in touch with.

Applicant never voted in Lebanese elections or served in the Lebanese military (see ex. 2; R.T., at 59). He has never sought or held political office in Lebanon. He has no property or other financial interests or inheritance expectancies in Lebanon, and has never performed or attempted to perform duties, or otherwise acted so as to serve the interests of Lebanon in preference to the interests of the U.S., since becoming a U.S. citizen (ex. 2; R.T., at 56, 78-79). To the contrary, he takes an active interest in U.S. political elections and has donated to U.S. political candidates (R.T., at 59-60).

Applicant has no intention of returning to Lebanon to reside (R.T., at 78), and has never been detained by Lebanese government officials. He provides some financial assistance to his immediate family in Lebanon (R.T., at 74-77). He wire transferred \$2,000.00 to fund his mother's operation before her death and smaller contributions to underwrite other medical and living expenses (R.T., at 75).

Historical background of Lebanon

Since gaining independence, in 1943, Lebanon has enjoyed a somewhat checkered history: interspersed with periods of political upheaval and relative prosperity. Beirut has a lengthy history as an important regional finance and trade center (see *Background Note: Lebanon, supra*, at 3). Political and economic conditions on the ground in Lebanon continue to remain fluid and subject to change.

Palestinian refugee camps emerged in Lebanon in the early 1970s, following the 1967 Arab-Israeli war, and the ensuing secret 1969 Cairo Agreement permitting the establishment of Palestinian camps in Lebanon (*id.*). Since 1979, Lebanon has been in a state of war with Israel and still does not recognize Israel's right to exist (see *id.*, at 3; *Travel Warning, Lebanon, supra*, at 1).

Full scale civil war erupted in Lebanon in 1975 between Christians and Palestinian forces combined with leftist Muslim factions. As the fighting spread through most of the country, Lebanon's president called for support from Syrian troops. A former Arab Deterrent Force (which included Syrian troops already present) was deployed to help staunch the violence (see *Background Note: Lebanon, supra*, at 3).

Conditions in Lebanon deteriorated in 1978 following a PLO attack on an Israel bus that caused heavy casualties. The incident prompted Israel to invade Lebanon in March 1978. Reacting to Israel's invasion of Lebanon, the UN Security Council passed Resolution 425, which called for the immediate withdrawal of Israeli forces and created the UN Interim force in Lebanon (UNIFIL) to maintain the peace.

Intermittent peace and terrorist activity followed an interim cease-fire in 1981, which the U.S. supported. In May 2000, Lebanon, Israel and the U.S. signed an agreement for Israel's withdrawal, conditioned on the departure of Syrian troops (see

Background Note: Lebanon, supra, at 4). When Syria refused to sign the agreement, Israel withdrew unilaterally from the Shif sector (south of Beirut), leaving the warring Druze and Christian militias without a buffer. The Druze subsequently gained control of the Shif region, which in itself triggered a virtual collapse of the Lebanese Army in February 1984 (*id.*). With the Army's collapse, terrorist activity in Lebanon increased, and radical Muslim factions began their ascent.

Factional conflicts in Lebanon increased between 1975 and 1989, as reconciliation efforts faltered. Political conditions remained unstable throughout this period (see *Background Note: Lebanon, supra*, at 5).

After the adoption of the Ta'if Agreement in 1989, political conditions in Lebanon improved for awhile (see *Background Note: Lebanon, supra*, at 5). In August 1990, the Lebanese parliament and the country's new president came to terms on constitutional amendments that included some of the political reforms envisioned in the Ta'if Agreement. Postwar reconstruction (1992-2005) was marked by economic uncertainty and the collapse of the Lebanese currency (*id.*).

By 2005, Syria's military and intelligence presence in Lebanon had grown considerably. Historically, Syria claimed territory in Lebanon as its own, and never signed a boundary agreement with Lebanon, or fulfilled its numerous pledges to establish full diplomatic relations with Lebanon (see *Background Note: Lebanon, supra*, at 6). The UN Security Council expressed its concerns over the diplomatic impasse by adopting Resolution 1559 in September 2004. Resolution 1559 called for withdrawal of all remaining foreign forces from Lebanon, the disbanding and disarmament of all Lebanese and non-Lebanese militias, the deployment of the Lebanese Armed Forces (LAF) throughout the country, and a free and fair electoral process in the scheduled presidential election (*id.*).

Resolution 1559 was never fully honored by Syria and other non-governmental organizations (primarily Hizballah) that operated mainly in the south. Fueled by massive protests over the assassination of prime minister Rafiq Hariri in 2005 and the international pressures brought to bear on Syria, Syrian military troops were fully withdrawn in April 2005 (see *Background Note: Lebanon, supra*, at 7).

Following the murders of prominent Lebanese journalists investigating the assassination of the prime minister and political leaders, a UN Int'l Independent Investigative Commission (UNITIC) was formed to investigate Prime Minister Rafiq Hariri's assassination and related crimes (*id.*). In December 2006, the Lebanese cabinet approved an agreement with the UN Security Counsel to create a special tribunal with responsibility for trying those who might be indicted as a result of the investigation (*id.*). In March 2009, the U.S. State Department announced the opening of the Special UN Tribunal for Lebanon whose mission is to hold accountable those found to be responsible for the assassination of former Lebanese Prime Minister Hariri (see ex. L).

Lebanese parliamentary elections were held in May 2005, and the anti-Syrian opposition headed by the late prime minister's son (Sa'ad Hariri) won a majority of the 72 seats (see *Background Note: Lebanon, supra*, at 7). Parliament, in turn, approved the first "made in Lebanon cabinet" in almost 30 years in July 2005 (*id.*). The published cabinet's agenda highlighted political and economic reforms, but also recognized Hizballah's right to possess military weapons to employ resistance initiatives against perceived Israeli occupiers of Lebanese territory.

Hizballah sponsored terrorist actions erupted in July 2006 when Hizballah guerrillas invaded Israel, killed three Israeli soldiers, and precipitated a war with Israel (see *Background Note: Lebanon, supra*, at 8). When hostilities wound down in August 2006, significant casualties were reported on both sides. UN Resolution 1701 (ending the war) provided for a cease-fire, Israeli withdrawal of its troops and lifting of its blockades, disarming of Hizballah and other militias, and a ban on unauthorized weapons transfers into Lebanon (*id.*). UN resolution 1701 strengthened UNIFIL's mandate and authorized its enlargement from about 2,000 members to a maximum of 15,000. With the added support of UNIFIL, the LAF were able to forcefully deploy their military units in southern Lebanon and Israel's border for the first time in almost four decades (*id.*).

Although Syria withdrew its military resources from Lebanon as directed by UN Resolution 1701, it has continued to maintain a strong influence in Lebanon policies with the clear objective of paralyzing and undermining Lebanon's cabinet (see *Background Note: Lebanon, supra*; R.T., at 94-96). Political conditions in Lebanon remain guarded, but hopeful.¹ Parliamentary elections scheduled for early June 2009 promised to have international observers in Applicant's view (R.T., at 118).

Political and economic makeup of Lebanon

Official State Department records document that Lebanon is a parliamentary democracy. Since the institution of a power sharing arrangement in 1990, Lebanon has operated under a constitutionally established central government. Structurally, Lebanon's constitution provides for direct elections every four years. By the terms of the 1943 national pact (an unwritten agreement) establishing the foundations of Lebanon's modern political system, power is allocated on an essentially confessional system based on the 1932 census (see *Background Note: Lebanon, supra*, at 8). Until 1990, seats were divided according to a 6 to 5 ration of Christians to Muslims (Druzes were counted as Muslims). This ratio was changed to a 50-50 ratio in the Ta'if Agreement. Public positions are similarly allocated with the top three positions allocated as follows: Presidency (to a Maronite Christian), prime minister (to a Sunni Muslim), and speaker of

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In recent elections, Sa'ad Hariri (son of the assassinated former prime minister) successfully put together a coalition that prevailed over Hizballah's major opposition. Hariri's election is not enough to warrant opening the record at this time to explore the implications of whether this election is likely to produce a stronger central government. Time will tell. The new prime minister pledges to concentrate resources on rebuilding the LAR and the Internal Security Forces (see election report in *Washington Post*, at A15 (June 13, 2009)).

the Parliament (to a Shi'a Muslim (*see id.*). This political make-up of the country is fully consistent with Applicant's personal understanding of Lebanon's operational political currently in place (R.T., at 92-96).

It is certainly true that parliamentary elections have been severely hampered over the past 30 years by wars and political turmoil. Despite ongoing civil conflict, Lebanon has continued to operate under a constitutionally established central government since its institution of power sharing in 1991. While the U.S. does maintain diplomatic relations with Lebanon, the country remains subject to close security review by the U.S. State Department.

U.S. citizens who travel to the region are advised to exercise caution, particularly when traveling in parts of the southern suburbs of Beirut and portions of the Bekaa Valley and south Lebanon (*see Country Specific Information, Lebanon, supra; Travel Warning, Lebanon, supra*). The State Department emphasizes that Hizballah (a Lebanese Shi'a group designated by the U.S. as a terrorist organization) has not been disarmed and maintains a strong presence in these areas. Palestinian groups hostile to both the Lebanese government and U.S. citizens generally operate largely autonomously in Lebanese refugee camps throughout the country and pose heavy risks to both U.S. citizens and Palestinian camps.

Efforts to abolish the confessional system have dominated Lebanon politics for decades. Although moderated somewhat under the 1989 Ta'if Agreement, the system remains essentially intact today (*see Background Note: Lebanon, supra*, at 8-9).

Official State Department reports confirm that Lebanon's economy is the 68th largest export market for the U.S. (*see Background Note: Lebanon, supra*, at 8-9). Major competitors of U.S. companies in Lebanon include French, British, Korean, and Chinese companies (*id.*, at 11). The U.S. has a Trade Investment Framework Agreement (TIFA) that is designed to promote investment and expand trade with Lebanon in accordance with UN Security Council Resolution 1701.

Between 1975 and 2005, the U.S. channeled more than \$400 million in aid to Lebanon (*see Background Note: Lebanon, supra*, at 12). The U.S. stepped up its economic aid following the 2006 war. And since reassessing its security aid to Lebanon in 1993 to bolster the LAF, the U.S. has expanded its military assistance to support the Lebanese government's fulfillment of its obligations mandated by UN Resolution 1701.

Human rights, collection, and safety concerns in Lebanon

Despite a democratically elected government and good relations with the U.S., Lebanon's overall human rights record has not been very good. Its human rights record has been marked by reported incidents of excessive force and torture against both Lebanese citizens and foreigners by Lebanese security and intelligence personnel, arbitrary arrest and detention of persons critical of the government policies, flawed elections, and Syrian influence.

Even Lebanon's new Code of Criminal Procedure (enacted in 2001) has not been able to curb lengthy pre-trial detention of persons critical of the Government's policies, stem continued surveillance of political activities that could pose a potential threat to the Government, or solve reports of politically motivated disappearances (see *Country Reports on Human Rights Practices - 2007, Lebanon, supra*, at 1-4)

Lebanon's overall human rights record continues to be poor: marked by reported incidents of excessive force and torture against both Lebanese citizens and foreigners by Lebanese security and intelligence personnel. Reported cases of arbitrary arrests and detentions by Lebanese security forces, as well as instances of unlawful deprivations of life, torture and other abuses have been numerous since the adoption of its constitution (see *Country Reports on Human Rights Practices - 2007, Lebanon, supra*, at 1-4). While Lebanon law does not specifically prohibit torture in its Code of Criminal Procedure it does require judicial warrants before arrests, except for situations involving immediate pursuit (*id.*, at 3). The absence of any legal authority has not stopped police and government agents from arbitrarily arresting and detaining people (*id.*, at 3-4). Further, militias and non-Lebanese forces (NGOs) operating outside of Lebanon's central government authority have shown no reluctance to violate privacy rights to obtain needed data and information from perceived adversaries.

Still, despite all of the chronicled weaknesses in Lebanon's institutions, the Lebanon government still functions as a democratic state under a constitution that retains a judicial system independent in principle, even if it is subject to political pressure and reported abuses in its insurance of fair trials and the protection of constitutionally protected liberties like freedom of the press, religion and association

And on a more positive note, Lebanon's human rights record has shown improvement in recent years. In the January 2009 Annual Report of the UN's Human rights Council, the High Commissioner writing for the Council noted the Lebanese Government's expressed commitment to expose and eliminate arbitrary detentions and torture of arrested persons. The Lebanese government is credited with highlighting the importance of other human rights, such as access to adequate medical care in prisons and of respecting the rights of immigrants and foreigners residing in Lebanon.

Cases of illegal exporting of technology have been reported. One such case involved the attempted illegal export of U.S. restricted, dual use technology to Hizballah. In August 2005, the involved individual pleaded guilty to attempting to illegally export military night-vision equipment and infrared aiming devices to Hizballah (see *Naji Antoine Abi Khalil Sentenced to 60 Months Imprisonment for Attempting to Export Military Night-Vision Equipment to Hizballah, supra*). In November 2007, an individual pleaded guilty to attempting to provide night vision goggles, a thermal imaging device, and two global positioning modules to a person in Lebanon who was purchasing equipment for Hizballah (see *Michigan Man Pleads Guilty to Supporting Hizballah, supra*). Whether these cases represent the tip of a serious pattern of illegal exporting of dual use technology to Hizballah and other terrorist NGOs operating in Lebanon or isolated events

is not clear. State Department records do not make the case for classifying Lebanon as a serious source of illegal acquisitions of dual use and other types of technology that can be used for military purposes by NGOs operating in the country.

For Americans traveling abroad in Lebanon, passports and visas are required (see *Travel Warning, Lebanon, supra*, at 1). Care is advised when traveling in parts of the southern suburbs of Beirut, portions of the Bekaa Valley, and areas south of the Litani River in South Lebanon (*id.*, at 2). The State Department emphasizes that Hizballah (a Lebanese Shi'a group designated by the U.S. as a terrorist organization) has not been disarmed and maintains a strong presence in these areas (see *Country Specific Information, Lebanon, supra*, at 2).

Palestinian groups hostile to both the Lebanese Government and U.S. citizens generally operate largely autonomously in Lebanese refugee camps throughout the country and pose heavy risks to both US citizens and Palestinian camps (*id.* Still another terrorist group, Asbat al-Ansar (with reported links to Al-Qaida) is known to have targeted US and Lebanese Government interests. State Department records report that Hizballah militants blocked the road to Rafiq Hariri Int'l Airport in May 2008, rendering the airport inaccessible to travelers (*id.*). While airport access has since been restored, widespread hostilities have been curtailed, and the country has gained a new president and cabinet, concerns over Hizballah sponsored violence have not diminished (*id.*, at 2).

Americans have been targets of terrorist assaults in the past and promise to remain so in the future for so long as terrorist movements are unimpeded. For the foreseeable future, terrorist groups, such as Hizballah, al Qaeda, and al Sham continue to be allowed to operate in the country with virtual impunity (see *Country Specific Information, Lebanon, supra*, at 2). Strengthening of LAF forces with the support of a better organized and financed central government offers the most promise for stabilizing the country.

Character assessments

Applicant has received excellent endorsements from his company's management. His supervisors describe him as a highly competent professional engineer who is logical and trustworthy in all of his work assignments (see ex. C). He is commended by his former management and Government customers for his recognized expertise and valuable technical support to the U.S. delegation he worked with and his important contributions to satellite communication technology (ex. C). His colleagues past and present credit him with strong character and integrity with a reputation for dedication and sincerity on and off the job (ex. C).

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by

administrative judges in the decision making process covering DOHA cases. These Guidelines require the administrative judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the administrative judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the administrative judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

The Concern: 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. See Adjudicative Guideline (AG), ¶ 9.

Foreign Influence

The Concern: 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 the this Guideline can and should considered 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. See AG, ¶ 6.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is a naturalized U.S. citizen who immigrated from Lebanon in 1980 for educational reasons. Security concerns focus on members of Applicant's family and his retention of his Lebanese passport (indicative of a foreign preference) and his past unwillingness to renounce his Lebanese citizenship.

Security concerns are raised, too, over members of Applicant's immediate family (*i.e.*, his father, sisters and brothers) and in-laws who are citizens and residents of Lebanon, a country historically friendly to the U.S., albeit, one with a reported history of political instability fueled by the terrorist activities of Hizballah and other non-governmental terrorist organizations operating in Lebanon.

Foreign Preference

The exercise of active dual citizenship necessarily entails allegiance assessments and invites critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the U.S. The issues, as such, raise concerns over Applicant's preference for a foreign country over the U.S.

By virtue of his birth in Lebanon to parents of Lebanese ancestry, Applicant acquired Lebanese citizenship and a Lebanese passport, which he continued to retain even after becoming a U.S. citizen in 1999 and after the Lebanese passport expired in 2002. Until this hearing, he consistently declined to relinquish his expired Lebanon passport or express any intention to renounce his Lebanese citizenship because these connections to Lebanon are part of his heritage. Since becoming a naturalized U.S. citizen, Applicant has taken no actions (save for his retaining his expired Lebanese passport), and exercised no Lebanese privileges, that can be fairly characterized as active indicia of dual citizenship. In fairness to Applicant, he holds no assets in Lebanon that pose recognizable conflicts of interest or otherwise manifest indicia of Lebanon preference. He has no foreign financial interests; he has never served in the LAR or

voted in a Lebanese election, and has never sought to hold any political office in Lebanon. He retains no other Lebanon privileges, and has never performed or attempted to perform duties, or otherwise acted so as to serve the interests of Lebanon in preference to the interests of the U.S., since becoming a U.S. citizen.

Because Applicant continued to possess his Lebanon passport after becoming a naturalized U.S. citizen, the Government may apply disqualifying condition (DC) ¶ 10(a) of AG ¶ 9, “exercise of any right, privilege or obligations of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election.

In Applicant’s favor, he offered to surrender his expired Lebanese passport and consider renouncing his Lebanese citizenship. He subsequently supplemented the record with documented surrender of his expired Lebanese passport to his FSO. While timing conditions did not permit him to effectively renounce his Lebanese citizenship, he expressed a clear intention to do so in the supplemental materials he provided after the hearing.

By relinquishing his expired Lebanese passport, Applicant has complied with the mitigation requirements of MC ¶ 11 (e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” of AG ¶ 9. He satisfies the mitigation requirements of MC ¶ 11 (b), “the individual has expressed a willingness to renounce dual citizenship.” Accordingly, each of these mitigating conditions has application to Applicant’s situation.

Whole person precepts favor Applicant’s preference for the U.S. over Lebanon. He is a U.S. citizen by naturalization and has consistently demonstrated his loyalty for the U.S. All of his financial interests are situated in the U.S. He is highly regarded by his current supervisors and colleagues and past senior managers and government

customers for his important contributions to communication satellite technology. And he has impressed supervisors, colleagues, and Government customers alike who have worked with him over the years with sound judgment, reliability and trustworthiness in executing his project responsibilities. Expressing his interest in renouncing his Lebanese citizenship and relinquishing his Lebanese passport document demonstrates his undivided loyalty and preference for U.S. institutions and its way of life over those of his birth country (Lebanon). He has never served in the LAF, voted in a Lebanese election or held an elective or appointed position in Lebanon. Moreover, all of his financial interests are in the U.S. He has no financial interests in Lebanon and has exercised no privileges in Lebanon (save for possessing a expired Lebanese passport before he surrendered it to his FSO this year).

Overall, Applicant persuades that his preference is for the U.S. He satisfies his proof burden in several ways: demonstrated lack of any exercise of any privileges associated with his Lebanese citizenship, save for his past possession of his expired Lebanese passport after his naturalization as a U.S. citizen in 1999. Applicant's actions absolve himself of foreign preference concerns and enable him to carry his evidentiary burden on the presented issue of whether his preference lies with his adopted country (U.S.) or the country (Lebanon) where he was born and raised as a minor. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a through 2.c of Guideline C.

Foreign influence concerns

By virtue of the Lebanese citizenship and residency of Applicant's parents and siblings in Lebanon, they present potential heightened security risks covered by disqualifying condition (DC) 7(a), "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," of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these family members in Lebanon pose potential concerns for Applicant because of the risks of undue foreign influence that could compromise sensitive or classified information under Applicant's possession and/or control.

None of Applicant's family members residing in Lebanon have any identified prior Lebanese military or intelligence service. Applicant maintains monthly contact with his family members and has made visits to Lebanon to see his parents (last visiting in 2007 to attend his mother's funeral) and siblings. He provided some financial support in the past to his mother before her death in 2006. On the strength of these connections alone, they present some concerns over the potential for compromise and coercion for so long as they reside in Lebanon. Were any of these immediate family members to be placed in a hostage situation, Applicant could be subject to conflicts over ensuring their well being and protecting classified information. For this reason, DC 7(b), "connection 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," has some application to the facts of this case.

To be sure, none of Applicant's immediate family members residing in Lebanon have any history to date of being subjected to any coercion or influence. These historical antecedents, when considered together with Applicant's limited personal contact with these immediate family members (with some personal visits in the past and monthly telephone interchanges), do limit the severity of a compromise risk under the facts of his situation. However, the absence of any past coercive measures taken by Lebanese authorities does not completely absolve Applicant from coercive risks in the future. Lebanon does have some history of human rights abuses and has for the most part over the past 30 years operated with a relatively weak central government and strong foreign adversaries (both state and NGOs) operating throughout the country. As a result, Lebanon must be considered for heightened risk status under the foreign influence guideline.

Still, before the presence of Applicant's immediate family members in Lebanon can be negated or excluded as manageable risks, the state of Lebanon's laws and institutions governing internal security, human rights, and intelligence gathering matters, must be assessed when considering whether the continuing citizenship and residency of Applicant's immediate family members in Lebanon make the risks of duress or compromise to his family unmanageable ones from the standpoint of protecting U.S. classified information.

Taking Applicant's explanations about his parents and siblings at face value, any risk of pressure or undue foreign influence on Applicant and/or his immediate family would appear to be insubstantial and clearly manageable. Lebanon, despite its history of unstable political and security conditions (marked by the presence of Syrian troops and terrorist organizations operating within its borders) and a checkered human rights record, is not a country considered hostile to U.S. interests by the U.S. State Department. Moreover, nothing in the backgrounds of Applicant's father, brothers and sisters, or their spouses, have changed over the past 30 years to warrant the attribution of increased security risks to their current status in Lebanon.

The Adjudicative Guidelines governing security clearances do not dictate *per se* results or mandate particular outcomes for any chosen set of guidelines covering risks of foreign influence. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security assessments necessarily embrace similar risk assessments under the new Directive guidelines for assessing foreign influence risks and concerns associated with the individual's having family abroad, which include both common sense assessments of country risks and information available from public sources.

Unlike the old Adjudicative Guidelines, though, the new ones do take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

Based on Applicant's case-specific circumstances, MC 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the U.S." is available to Applicant. Because of the presence of Applicant's immediate and extended family members in Lebanon has not been, and does not expect to be exploited by the Lebanon Government to facilitate the compromise of classified information available to Applicant, any potential risk of a hostage situation or undue foreign influence brought in the hopes of eliciting classified information out of Applicant (either directly or indirectly) becomes an acceptable one, and a risk at least partially compatible with the mitigation benefits covered by MC 8(a).

In the same vein, MC 8(b), "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," is also fully available to Applicant. Applicant's demonstrated loyalty and commitment to the U.S. and its institutions and values, the absence of any history of coercive measures taken against any of Applicant's family members in Lebanon, and Applicant's more limited personal contacts and ties with his family members since his mother's death, are well supported in this administrative record.

Applicant's demonstrated loyalty, patriotism, and professional commitments to the U.S., are credible and substantial. Considered together with the absence of any historical attempts to pressure or coerce any of Applicant's family members in Lebanon, Applicant's case-specific circumstances are enough to neutralize all potential conflicts that are implicit in his relationships with his father, siblings and their spouses.

One other mitigating condition has mixed application to Applicant's situation. MC 8(e), "the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country," has some prospective value based on Applicant's long tenure of holding security clearances and working in highly technical and protected fields, and his demonstrated loyalty and commitments to U.S. security interests. It is true that our Appeal Board has accorded very little weight to stated intentions to take corrective steps in a hypothetical set of circumstances, absent record evidence that an applicant has acted similarly under comparable circumstances. See ISCR Case No. 07-00029, at 4

(App. Bd. Dec. 7, 2007); ISCR Case No. 06-24575, at 4 (App. Bd. Nov. 9, 2007). Applicant's long and meritorious contractor service and demonstrated loyalties to U.S. core security interests and values make him a very credible applicant for reporting any potential compromise attempts on any of his relatives residing in Lebanon.

Fully considering Applicant's demonstrated devotion to U.S. interests and values and the lack of any reported associations between his father and siblings and the Lebanon government and foreign forces operating in Lebanon, any residual risks of undue foreign influence on Applicant and/or his family members residing in Lebanon in the foreseeable future are manageable ones.

Conflation of all of the circumstances surrounding Applicant's devoted federal contractor service and commitments to U.S. security interests and core values, Lebanon's country status, Applicant's more limited personal contacts with his father, siblings and their spouses residing in Lebanon, and the absence of any prior attempts by the Lebanese government or foreign agents and NGOs operating in Lebanon to pressure, exploit or coerce any of Applicant's relatives residing in Lebanon augur well for Applicant in making the necessary predictive judgments about whether risks of pressure or coercion are mitigated.

Whole person assessment permits mitigation of Applicant's exposure to potential painful choices over ensuring the safety and well being of his father and siblings currently residing in Iran. To his credit, Applicant is a fully Americanized U.S. citizen with demonstrated strong loyalties and commitments to U.S. core values. The trust he has inspired with his supervisors, colleagues and Government customers, promises to ensure that he would report any Lebanese pressures or contacts to his facility security officer and not permit himself to be pressured by Lebanese authorities in any hypothetical hostage situation.

After carefully considering Applicant's familial connections in the U.S. and Lebanon and the risks of Applicant submission to Lebanese pressures should any of his family members residing in Lebanon be pressured or coerced by Lebanese authorities, and or foreign agents and NGOs) at some time in the foreseeable future, the weighted risks of a compromise are sufficiently discounted to become manageable ones at this time under a whole person assessment of all of the critical circumstances considered in this case.

Overall, any potential security concerns attributable to Applicant's relations with his father, siblings and their residing in Lebanon are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial relationships with relatives residing in Lebanon. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 2.a through 2.d of Guideline B.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E 2(a) of the Adjudicative Process of Enclosure 2 of the Directive.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE C (FOREIGN PREFERENCE): FOR APPLICANT

 Sub-paras. 1.a through 1.c: For Applicant

GUIDELINE B (FOREIGN INFLUENCE): FOR APPLICANT

 Sub-paras. 2.a through 2.d: For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

