

DATE: September 30, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-18860

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Matthew E. Malone, Esquire, Department Counsel

Pamela C. Benson, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was subject to foreign influence where he provided financial support to his ten siblings who still resided in Syria, had substantial property interests in Syria, and had failed to disclose his foreign connections on his clearance application. Applicant's falsifications of his clearance application and sworn statement suggested he could not be relied upon to tell the truth if the truth presented potential adverse consequences to his personal interest. Clearance denied.

STATEMENT OF THE CASE

On 18 October 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 30 November 2001, Applicant answered the SOR and requested a hearing. The case was assigned to me on 19 January 2002, and received by me the same day. On 26 February 2002 I set the case, and initially issued a Notice of Hearing on 1 March 2002 for a hearing on 14 March 2002. On 7 March 2002, I issued an amended notice moving the hearing to 13 March 2002, to accommodate changes in the travel schedule.

At the hearing, the Government presented seven exhibits--five admitted over Applicant's objection, two admitted without objection--and one witness; Applicant presented sixteen exhibits--eleven admitted without objection, three admitted over Government objection, and two excluded from the record--and the testimony of three witnesses, including himself. DOHA received the transcript on 25 March 2002.

PROCEDURAL ISSUES

At the hearing, Applicant waived the fifteen-day notice required under the Directive (Tr. 11).

FINDINGS OF FACT

Applicant admitted the allegations of subparagraphs 1. a., b., d., and f., and 2.b. and e. of the SOR. Accordingly, I incorporate these admissions as findings of fact. He denied the remaining SOR allegations.

Applicant--a 41-year old owner of a defense contractor--seeks access to classified information.

Applicant was born in 1960 in Syria; his parents were Palestinian refugees residing in Syria. He grew up in Syria, and completed his undergraduate education there before emigrating to the United States in 1984 (Tr. 190). He completed his masters and doctoral degrees in the U.S. and became a naturalized citizen in 1994.

Applicant has five brothers and five sisters who are Palestinian Nationals residing in Syria as refugees; Applicant provides financial assistance to his siblings (G.E. 2). Applicant and his mother have applied to bring his siblings to the U.S. (Tr. 184-5, G.E. 2, A.E. C). He has one brother who is a Palestinian National residing in the Ukraine. Another brother was a medical contractor with the Syrian government, where he held the equivalent rank of lieutenant. In February 2000, Applicant married his current spouse, a Palestinian National residing in Syria as a refugee. She has since emigrated to the U.S. as a permanent resident (Tr. 183 A.E. E); once she obtains her citizenship, Applicant plans to bring her family to the U.S. (G.E. 2).

On 8 June 1999, Applicant falsified a Security Clearance Application (SCA)(SF 86)(G.E. 1). Applicant was required to disclose his relatives and associates, including brothers and sisters (question 9) and citizenship of relatives and associates (question 10). Applicant reported his mother and father, and an unrelated adult living in his household (question 9), and reported the alien registration of his parents, then residing with Applicant, and the naturalization of the adult living with Applicant (question 10). Applicant failed to disclose any of his brothers and sisters residing in Syria or Ukraine, or their citizenship. (2) I have considered Applicant's testimony that he considered the question to require only relatives residing in the U.S. (Tr. 171) and specifically find that testimony not credible. The question clearly asks for brothers and sisters without limitation on location (and question 10 asks for citizenship of relatives, also without limitation on location), and footnotes referring to "other relatives" and "associates" in question 9 make it clear that foreign national relatives or associates are a particular concern if Applicant is bound to them by affection, obligation, or close and continuing contact.

Applicant also falsified the SCA by failing to disclose that he had approximately \$28,000.00 invested in Syria through his father's property business. Applicant asserted (Tr. 148, A.E. A), and provided an affidavit from his father (A.E. G.), that the money was originally given by Applicant as a loan to his father, but later "converted" to an "investment" in May of 2000 when the father informed Applicant that the money could not be repaid because it was tied up in land. I specifically find this assertion not credible. First, Applicant first asserted this claim at the hearing; and the father's affidavit is dated 12 March 2002. Second, the claim is contrary to his November 2002 statement (G.E. 2):

My father was a land developer in Syria. . . I have no direct financial or business interests in any foreign countries, but have invested a total of \$28,000.00 with my father's property holdings. Nothing is in my name. This is like a savings with my Dad. All of these holdings are in my father's name. . . This investment occurred between 1995 and present. Normally, I give my father this money in cash (3), but during my father's recent stay with me, I provided a check for \$4,000.00.

Finally, Applicant continued to wire money to his father (A.E. F) after May 2000 (\$6,300.00 in two transactions in 2001) when Applicant was supposedly surprised to discover that his father did not consider the transfers to be loans.

Applicant also falsified two questions designed to elicit if he had ever left a job under unsatisfactory circumstances (question 20), or been arrested, charged with, or convicted of any offense not listed elsewhere on the SCA within the last seven years (question 26). Applicant answered "no" to both these questions. In fact, he had been fired as a subcontractor by the prime contractor in May 1997 (4) and had been arrested for disorderly conduct in April 1994. (5)

When Applicant was employed as a subcontractor in 1996, he attempted to obtain health insurance as a "spouse" for a woman he was engaged to (but did not marry)(G.E. 4, Tr. 192). He apparently had the assistance of the prime contractor

through whom he was eligible for health coverage. Applicant turned in the application to the owner of the prime contractor, who never submitted it to the insurer because he discovered from the insurer that the woman could not be covered because resided outside the coverage area (in Syria). In November 2000, Applicant falsified his sworn statement to the DSS when he stated that he had never attempted to obtain health coverage for a "spouse" he was not married to.

At the hearing, the Defense Security Service (DSS) agent testified credibly that Applicant had the opportunity to review his sworn statement (G.E. 2), but made no changes (Tr. 41). She testified that Applicant provide a rough draft (A.E. B) which she incorporated into the sworn statement (Tr. 50).⁽⁶⁾ She testified that Applicant was completely aware of what was going on during the subject interview, knew that he was not required to consent to an interview, and knew the contents of the sworn statement (Tr. 56). He had no reservations about signing the statement (Tr. 78-79).

At the hearing, Applicant attempted to repudiate portions of his sworn statement (Tr. 147-148, 180). He blamed the DSS industrial security representative for his omitting his arrest in 1994 (Tr. 144-145), and blamed the arrest on racist attitudes of the taxi dispatcher (Tr. 151-155). He attempted to put responsibility for the false insurance application on the president of the prime contractor (Tr. 160-162). He blamed the DSS agent for what he claimed were incorrect statements in his sworn statement (Tr. 180-181).

An employee of Applicant's company considers Applicant truthful and honest. The contract monitor of the contract which Applicant subcontracted on, considers Applicant truthful and trustworthy. He was aware, from what Applicant told him, that relations between Applicant and the prime contractor were not cordial.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FOREIGN INFLUENCE (CRITERION B)

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in, a foreign country;

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of citizenship status, if the potential for adverse foreign influence or duress exists;

E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government;

E2.A2.1.2.4. Failing to report, where required, associations with foreign nationals;

E2.A2.1.2.8. A substantial financial interest in a country. . .

E2.A2.1.3. Conditions that could mitigate security concerns include:

None.

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

CRIMINAL CONDUCT (GUIDELINE J)

E2.A10.1.1. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

E2.A10.1.3. Conditions that could mitigate security concerns include:

None.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the SOR. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under Guideline B. Applicant appears vulnerable to foreign influence.

Applicant has eleven sibling residing overseas--ten in Syria--whom he supports financially. Applicant's spouse has immediate family residing in Syria. Applicant has a brother who served in a responsible position with the Syrian government. Applicant has a substantial investment in Syrian property through his father. Applicant did not disclose the existence of his siblings as required. The record contains insufficient information about his family members to conclude that they do not constitute an unacceptable security risk as required by MC 1. Nor are the financial interests sufficiently minimal to invoke MC 5. I resolve Guideline B. against Applicant.

The Government has established its case under Guideline E. Applicant failed to disclose his siblings, (7) failed to disclose his financial interests in Syria, and failed to disclose his arrest and his adverse removal from the government contract. He attempted to obtain health insurance for a spouse he did not have, then lied about that fact to the DSS. Applicant's denials of any intent to deceive the Government are unpersuasive. He gave conflicting answers on many issues, both in his testimony and in the exhibits. Generally, I considered him to not be a credible witness. The omissions had the potential to influence the course of the background investigation. I resolve Guideline E. against Applicant.

The Government has established its case under Guideline J. Applicant's falsifications violate 18 U.S.C. §1001, and Applicant has provided insufficient mitigation of his conduct. I resolve Guideline J. against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Paragraph 3. Guideline J: Against the Applicant

Subparagraph a: Against the Applicant

DECISION

In light of all 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. Although the failure to report citizenship was not alleged in the SOR, and thus not part of my assessment of this case on the merits, I have considered the omission on the issue of Applicant's credibility in general and on the issue of intent to falsify by omitting his siblings on question 9.
3. Actually, by wire transfer (A.E. F).
4. Applicant vigorously disputes that he was ever an "employee" of the prime contractor in any sense that would require him to disclose the circumstances of his removal on the SCA (Tr. 156-160). However, there is nothing in the question which would limit its application to a strict employer-employee situation. Further, it is clear from the record (G.E. 7, A.E. P) that the prime contractor considered Applicant an employee for most purposes. Applicant received medical benefits through the prime contractor Tr. 193-195, A.E. N). Finally, part of the acrimonious situation with the prime contractor was the fact that the prime contractor considered Applicant to be an employee, became angry when Applicant pursued a government contract independent of the prime (A.E. O), and demanded that Applicant choose whether to be an employee or not (Tr. 176). Regardless of whether Applicant was an employee or a subcontractor, the record is clear that Applicant's status with the prime contractor was terminated under the circumstances alleged in the SOR--to include having his base access stickers removed from his car (Tr. 174)--and Applicant was required to report those circumstances on his SCA.
5. Applicant disputes the circumstances of the arrest contained in the arrest report (G.E. 5), and alleges that he was the victim of a racially-motivated incident at a major airport near where he worked at the time. In fairness to Applicant, the police report is inaccurate because it describes Applicant as a taxi driver who refused to take a fare, when it appears from the record that Applicant was never a taxi driver, but was involved with the taxi dispatcher in an altercation over Applicant not being placed in the next available cab. However, what is undisputed by Applicant (Tr. 183) is that he was arrested and placed into custody in April 1994 (though the charges were later stricken) and he recalled the incident when filling out his SCA (Tr. 144). Although he claims the DSS industrial security representative gave him incorrect information (Tr. 145), it is clear that Applicant was informed to disclose all criminal conduct. Applicant's claim that he considered the conduct not criminal because it was merely a misdemeanor (Tr. 145) is not credible.
6. Comparison of G.E. 2 and A.E. B confirms that the draft was incorporated essentially verbatim into the sworn statement, although not necessarily in the same order.
7. And the fact that he also failed to disclose their citizenship inclines me to believe he did so deliberately.