

DATE: July 31, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-03415

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Esq., Department Counsel

**FOR APPLICANT**

Michael A. Zeytoonian, Esq.

**SYNOPSIS**

Applicant, a citizen of the United States (US) and Syria since his US naturalization in October 2000, has mitigated the foreign preference concerns presented by his dual citizenship. In April 2003, he applied to renounce his foreign citizenship; he gave his foreign passport, expired since May 2000, to his employer's security department. There is little risk of foreign influence, as his sole surviving parent, his father, acquired US citizenship and moved permanently to the US in 2002. He has amicable relations with his cousins and two friends in Syria, but he is willing to cease all contact with these foreign nationals if required. Clearance is granted.

**STATEMENT OF THE CASE**

On January 6, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) to the Applicant. The SOR 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign preference (Guideline C) and foreign influence (Guideline B) concerns.

On January 15, 2003, Applicant, acting *pro se*, executed an Answer to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me March 14, 2003. Pursuant to formal notice dated March 27, 2003, a hearing was scheduled for April 25, 2003. By letter dated April 21, 2003, counsel for Applicant entered his appearance. At the hearing held as scheduled, the Government submitted two exhibits and Applicant nine exhibits, all of which were admitted without objections. Testimony was entered from Applicant and Applicant's aunt by marriage, as contained in a transcript received on ay 6, 2003. At the Government's request, administrative notice was taken of two releases by the United States Department of State: a Consular Information Sheet on Syria, dated March 21, 2002 (current as of March 12, 2003), and an extract from the Country Report on Human Rights Practices for Syria in 2002, dated March 31, 2003.

## FINDINGS OF FACT

The SOR alleges foreign preference concerns related to Applicant's dual citizenship with Syria and the US and intent to exercise Syrian citizenship through renewal of expired foreign passport, and foreign influence concerns related to the Syrian citizenship and residency (parents part-time) of family members and friends. In his Answer, Applicant denied any preference for Syria or any intent to obtain a new Syrian passport. He admitted his father maintains maintain a home in Syria, but his father acquired US citizenship in January 2002. His mother passed away in April 2002. Although an aunt and uncle remain residents of Syria, Applicant denied any regular communication with them. He admitted to occasional electronic mail (email) contact with a few high school friends. Applicant's admissions are accepted, and incorporated as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 27-year-old engineer who has been employed in a full-time capacity by a defense contractor since June 2001 after working there for six months as a co-op student. He requires a security clearance for his duties in the engineering process area.

Applicant was born in June 1976 in Syria to resident citizens of that nation. Applicant's father, an electrician, had his own business maintaining and repairing industrial machinery. In 1983, Applicant and his parents visited his father's brother in the US, who had emigrated several years before, married a US citizen, and operated his own printing business in the US since 1973. Under the sponsorship of this family member, Applicant and his parents applied in 1984 to emigrate to the US.

While awaiting official approval of their applications, Applicant and his parents resided in their home in Syria where Applicant continued his education through a two-year program at the local university. In 1995, Applicant and his parents traveled to the US to obtain their "green cards." Applicant entered the US on a Syrian passport issued to him in May 1994 and valid to May 2000. After about a four-months stay, they returned to Syria in June 1995 so that Applicant could complete his studies.

On finishing the program at the foreign university in 1996, Applicant worked in his father's business while taking English language classes at night in preparation for his intended study at a US educational institution. In April 1997, Applicant came to the US with the intent of remaining, and for the next year he worked in the bindery department of his uncle's business. His parents accompanied him, and stayed almost one year.

In September 1998, Applicant matriculated into a private university to study engineering process. As a co-op student, Applicant performed engineering/quality assurance work for a video guide company from January 1999 to June 2000. He was trustworthy and reliable on the job while excelling academically. During the first summer of his employ, Applicant traveled to Syria on his Syrian passport to see his parents, who were trying to sell his father's business.

In mid-October 2000, Applicant became a naturalized United States citizen, taking an oath to renounce all foreign allegiances, to support and defend the United States Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the United States if required. That same month, he was issued his US passport. Applicant also registered with the US Selective Service.

In early January 2001, Applicant went to work as a technical intern, a student co-op position, with his current employer. In conjunction with his defense-related work, Applicant executed a security clearance application (SF 86) on January 10, 2001. Applicant disclosed his dual citizenship with Syria and the US since his US naturalization in October 2000, his possession of a valid Syrian passport until May 2000, and his foreign travel to Syria from June 1995 to April 1997 for education purposes, and from June 1999 to July 1999 for pleasure. Applicant also reported his parents' Syrian citizenship, but listed his address in the US as their permanent residence. His parents had returned to the United States in 2001 to attend his commencement.

In May 2001, Applicant's academic achievements were recognized by the university, with an academic award given to the highest ranking senior scholars at the institution. At graduation, he served as class marshal, having attained the highest grade average in the university's school of engineering technology.

On earning his bachelor's degree in engineering technology, Applicant became a full-time employee of the defense contractor. In late December 2001, he was interviewed by a special agent of the Defense Security Service (DSS) about his dual citizenship with Syria and the US. Applicant denied any military obligation in Syria or any willingness to bear arms for Syria. (1) He indicated he had never voted in any elections in Syria and had no intent of voting in the future. Concerning his expired Syrian passport, Applicant related he was in the process of applying for another Syrian passport as it "makes travel to Syria easier." He expressed an intent to use his US passport for all other foreign travel and a willingness to renounce his foreign citizenship if a position of trust was contingent on it. When interviewed, Applicant was unaware of the ASD(C3I) August 16, 2000 memorandum with respect to the possession and/or use of a foreign passport, clarifying that possession of a foreign passport could facilitate foreign travel unverifiable by the United States, and it raises questions of primary allegiance. (2)

In January 2002, Applicant's father became a US naturalized citizen. Applicant's parents then returned to Syria in an effort to sell his father's business and their home there. In late April 2002, Applicant's mother died in Syria. On learning of her death and planning to travel to Syria for her memorial service, Applicant contacted the Syrian embassy. Apprised he did not need a Syrian passport for trips to Syria of less than three months duration, Applicant made no effort to renew his expired Syrian passport, and he traveled to Syria for his mother's memorial service on his US passport. Sometime in Fall 2002, after selling his business in Syria, Applicant's father returned to the US. He has since resided with Applicant. As of April 2003, Applicant's father has been unsuccessful in selling the family's residence in Syria, which has an estimated value of \$50,000 to \$60,000 USD. The property is locked up and stands vacant. Applicant has little, if any, interest in his father's home in Syria, as he plans to remain in the US.

Circa April 2003, Applicant inquired of the Syrian embassy in the US of the requirements for renunciation of Syrian citizenship. Advised to write a letter and include identifying information, including his passport number and its expiration, Applicant on April 14, 2003, applied to renounce his Syrian citizenship. His request for renunciation was received by the Syrian embassy April 17, 2003. On April 23, 2003, Applicant gave his expired Syrian passport to his employer's security department.

Applicant is well-regarded by his coworkers, including the section manager who has supervised him for the past two years. Applicant has given this supervisor no reason to suspect his integrity or work ethic.

Applicant remains close to the paternal uncle and his spouse who sponsored his emigration. Since Applicant moved to the US permanently in June 1997, his aunt has had contact with him two to four times per week. She considers him a very dependable, loyal person with high morals, based on her knowledge of him as her nephew by marriage and from his work in the family's printing business, where she serves as the corporate clerk.

Applicant has a paternal aunt (his father's sister) and uncle who are resident citizens of Syria. His uncle had a private business making construction machinery. Applicant assumes his uncle has retired from the business, but he is not certain. Applicant sends these relations holiday cards twice per year, such as on Easter. He does not contact them by telephone. This aunt and uncle have six daughters, two of whom are resident citizens of Syria. Another daughter is a Syrian citizen who resides in Armenia, and the other three are US residents (two known by Applicant to be US naturalized citizens). Applicant contacts the cousins who reside in Syria by email once every month to once every other month, and the cousin in Armenia once or twice every few months. Applicant also has two friends from high school who are employed in Syria as a hair stylist and shoe salesman, respectively. Applicant has once monthly to once every other month email correspondence with these friends and he visited them on his trips to Syria. Applicant would be willing to cease any contact with these foreign relations and friends if required for sensitive access.

## **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of

the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. See Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

### **Foreign Preference**

E2.A3.1.1. 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A3.1.2.2. Possession and/or use of a foreign passport

E2.A3.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country

E2.A3.1.3.2. Indicators of possible foreign preference occurred before obtaining United States citizenship

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship

### **Foreign Influence**

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 create the potential for foreign influence that 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 or present in, a foreign country

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

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

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States.

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent

Under Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

### CONCLUSIONS

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guidelines C and B:

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. (3) A citizen of Syria from birth, Applicant's status as a dual national is not necessarily indicative of a foreign preference. (see E2.A3.1.3.1., dual citizenship based on birth in a foreign country as mitigating of foreign preference concerns). While the United States Government does not encourage its citizens to remain dual nationals because of the complications that might ensue from obligations owed to the country of second nationality, the Department of Defense does not require the renunciation of foreign citizenship to gain access. Yet, there must be adequate assurances that a dual citizen will not actively exercise or seek rights, benefits, or privileges of that foreign citizenship.

Applicant's use, as a permanent resident of the US, of his foreign passport to travel to Syria in 1995 and 1999, was not an active exercise of dual citizenship within E2.A3.1.2.1. Applicant's Syrian passport expired before he became a US naturalized citizen. However, Applicant's stated intent of December 2001 to renew that expired foreign passport after he became a US citizen and acquired a US passport raises issues of foreign preference. Applicant did not possess a valid foreign passport as a US citizen within disqualifying condition E2.A3.1.2.2. of Guideline C, but an expressed intent to renew his Syrian passport for future travel to Syria is certainly relevant in assessing the risk of Applicant acting in preference to Syria. As noted by the ASD(C3I) in his August 2000 memorandum, the use or possession of a foreign passport raises the risk of foreign travel unverifiable by the US as well as of primary allegiance.

In mitigation, Applicant was unaware as of his December 2001 interview of the ASD(C3I) policy clarification making clear the security risks presented by the possession and/or use of a foreign passport. To his credit, Applicant never acted on that intent. When the untimely death of his mother necessitated his return to Syria in May 2002, Applicant contacted the Syrian embassy about travel requirements. After learning that he could travel to Syria and stay up to three months on his US passport, Applicant made no effort to reacquire a valid Syrian passport. Instead, he traveled to Syria in May 2002 on his US passport, conduct consistent with his US citizenship. Albeit very recent, Applicant's efforts to renounce his Syrian citizenship confirm his preference for the US. Although the Syrian authorities had not acted on his request as of

the hearing, his demonstrated willingness to renounce dual citizenship is mitigating of foreign preference (*see* E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship). His surrender of possession of his long-expired foreign passport into the custody of his employer's security personnel is further indication of his desire to live in the US, a country that presents freedom and opportunity not available in Syria. Although Applicant has been a continuous resident of the US only since April 1997, his future has been focused on the US since 1983/84 when he applied for emigration. Subparagraphs 1.a. and 1.b. are resolved in his favor.

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. The Government's concerns under Guideline B were based to significant extent on Applicant's parents being citizens of Syria and having a home there. Apparently unknown to the Government, Applicant's mother passed away and his father acquired US citizenship through naturalization and was living with Applicant by the date of SOR issuance. Since his father has dual citizenship with Syria and the US, and continues to own a personal residence in Syria, his situation falls within disqualifying condition 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 or present in, a foreign country.

Applicant has other relations (paternal aunt, her spouse, and two female cousins) and two friends from high school who are resident citizens of Syria. Another female cousin is a Syrian national living in Armenia. Applicant is not especially close to these relatives, notwithstanding the blood connection. His contact with his aunt and uncle is limited to holiday cards (Easter and similar occasions) twice per year. With regard to his cousins residing in Syria, he corresponds via electronic mail once per month or once every two months. Applicant and his cousin in Armenia are in contact once or twice every few months. While his contact with the cousins is with sufficient frequency to where it does not fall within mitigating condition E2.A2.1.3.3. (contact and correspondence with foreign citizens are casual and infrequent), Applicant has expressed a credible willingness to give up all contact with these foreign relations should it be required for access. Clearly, these relationships are regarded by Applicant as secondary to his job. Applicant considers the two high school friends in Syria to be close friends. In addition to the occasional email correspondence, Applicant saw these friends when he traveled to Syria in 1999 and 2002. These friends attended his mother's memorial service in May 2002. DC E2.A2.1.2.1. applies to these self-described close relationships. Yet, Applicant expressed a similar willingness to relinquish these foreign ties if necessary.

The security concerns engendered by the foreign citizenship of close family members and associates may be mitigated where it can be determined that the immediate family member(s), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States (*see* E2.A2.1.3.1.). There is no evidence Applicant's relations or friends have ever been agents of a foreign power. Applicant's father, before his successful closure and sale of his business in Syria in Fall 2002, was an electrician who had his own business repairing and maintaining industrial machinery. Applicant's two friends work as a hairstylist and shoe salesman, respectively. However, Applicant also has the burden of demonstrating that his immediate family members and close associates are not in a position to be exploited by a foreign power. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non-coercive means of influence being brought to bear on, or through, the foreign relations and associates.

As recently articulated by the DOHA Appeal Board in ISCR Case No. 02-04786, decided June 27, 2003, when the foreign ties at issue involve a country known to sponsor international terrorism and to have a poor human rights record, Applicant bears a particularly heavy burden to demonstrate that his relationships with foreign nationals do not present a security risk. As reflected in the State Department's report on human rights practices in Syria in 2002, arbitrary arrest and detention continued, notwithstanding Syria's claim to having frozen "martial law." After gaining permanent residency status in the US, Applicant's parents historically divided their time between Syria and the US, largely because of his father's business in Syria. The potential for undue influence present when they were in Syria no longer exists to any significant extent. In January 2002, Applicant's father became a US naturalized citizen. Following the death of his spouse, and the closure and sale of his business, Applicant's father moved permanently to the US in Fall 2002. His US residency and citizenship render him unlikely to be susceptible to foreign influence, notwithstanding his status as a dual citizen. While his father has not been successful in selling the family home, the house is worth only between \$50,000 and \$60,000 USD and his father has been content with leaving it closed up and vacant. Although there is furniture in the

home, Applicant's father sold his automobile in Syria, which is further indication of his intent to remain in the US. Should the property remain unsold and his father predecease him, Applicant as an only child might inherit the foreign real estate. Applicant testified persuasively that he has little interest in the property.

With regard to his foreign resident cousins and friends, Applicant testified credibly he would be willing to cease all contact with them if it was required by his employer or the Government. Those individuals to whom Applicant shares an especially close bond (his father and the uncle and aunt who operate the printing business in the US) have chosen to make the US their home. Applicant is not likely to jeopardize their security by succumbing to foreign influence. Those who know Applicant personally vouch for his character. Applicant is regarded as a person of integrity and reliability by those who had the opportunity to observe and assess his academic achievement, and more recently, his performance on the job. In the event undue pressure were to be placed on those relations or friends residing abroad, I am persuaded Applicant would report to proper authorities in the US any contacts, request, or threats by foreign authorities or individuals. Favorable findings are warranted as to subparagraphs 2.a., 2.b., and 2.c. as well.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

### **DECISION**

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 a security clearance for Applicant.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. Applicant testified that as the only male child of a living mother, he was exempt from military service in Syria. (Transcript p. 80). While Applicant has notified the Syrian embassy of his desire to renounce his Syrian citizenship, he was still a citizen of Syria as of his hearing. It is not clear whether Applicant remained exempt from compulsory military service in Syria following his mother's death, although per the US State Department, a legislative decree was issued by the Syrian president on July 30, 2000, which allows Syrian and Palestinian male citizens who live abroad to pay \$5,000.00 to be exempted from military service.

2. In his memorandum of August 16, 2000, the ASDC<sup>3</sup>I stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns

underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.

3. Dual citizenship is recognized by the United States, and a decision to deny or revoke security clearance based solely on one's status as a dual citizen would raise constitutional issues. As the DOHA Appeal Board articulated (ISCR Case No. 99-0454, October 17, 2000), dual citizenship in and of itself is not sufficient to warrant an adverse security clearance decision. Under Guideline C, the issue is whether an applicant has shown a preference through his actions for the foreign country of which he is also a citizen. Among the specific behaviors which raise significant Guideline C issues is possession/use of a foreign passport.