

DATE: December 21,2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27951

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Jason R. Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the foreign influence security concern due to his family ties to Syria. Clearance is denied.

STATEMENT OF THE CASE

On October 27, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B for foreign influence due to Applicant's family ties to Syria. Applicant responded to the SOR on November 14, 2003, and he indicated he did not wish to have a hearing. Also, Applicant admitted the allegations in SOR subparagraphs 1.a, 1.b, and 1.c.

On April 19, 2004, Department Counsel submitted his written case consisting of all relevant and material information that could be adduced at a hearing. This so-called File of Relevant Material (FORM)⁽²⁾ was mailed to Applicant on or about April 21, 2004, and it was received by Applicant on May 3, 2004. Applicant did not submit any information within the 30-day period after receiving the FORM. The case was assigned to me on June 18, 2004. Issuing a decision in this case was delayed due to a heavy caseload.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the record, I make the following findings of fact:

Applicant is a 39-year-old never married man who was born in Syria in 1965. He obtained U.S. citizenship via the naturalization process in July 2001. He is employed as a software engineer for a company engaged in defense

contracting, and he has worked for this company since December 2001.

In August 1987, Applicant came to the U.S. on a student visa and was a student at a state university. He was awarded an MBA degree in August 1992.

From August 1993 to October 1996, Applicant lived and worked in Syria. He was hired as a foreign service national by a U.S. governmental agency in Damascus, Syria. Applicant worked as an information specialist dealing with communication and information affairs involving the Syrian media. Applicant performed his duties well, and there is documentation showing outstanding duty performance, praise from American colleagues with whom he worked, and awards for his outstanding duty performance (Item 5, attachments).

In about December 1996, Applicant decided he wanted to further his education and returned to the U.S. to pursue another degree. From January 1997 to May 1999, Applicant was a student at a state university. He was awarded a bachelor's of science degree in computer science in May 1999.

In conjunction with his current employment, Applicant completed a security-clearance application in February 2002 (Item 4). In doing so, he disclosed his birth in Syria, dual citizenship with Syria, and that he possessed a Syrian passport, which was issued in August 1993 with an expiration date of August 1999. Applicant also disclosed multiple family members who are citizens of and residents in Syria.

Subsequently, Applicant was interviewed by a special agent of the Defense Security Service. That interview produced a written statement (Item 5), and Applicant had the following to say about possessing a foreign passport:

I received my U.S. passport on Aug. 2001 and I had an expired Syrian passport. I supplied my U.S. passport and my expired Syrian passport to [DSS Agent Doe] for his review. If I am required to do so I will relinquish my expired Syrian passport which I retained for [d]ocumentation purposes. I have no intention to renew my Syrian passport.

Concerning his family ties to Syria and his ability to hold a security clearance, Applicant stated the following:

My family in Syria cannot affect my ability to handle classified information. My family does not know that I am employed by a DOD contractor. My family does not know, nor do they have the need to know about the details of my job. My family has no foreign government, no military and no terrorist connections. I am 100% loyal to the U.S. government and I am not working for any foreign intelligence service. I have no connection to any group that advocates violence or terror. As stated above I demonstrated my loyalty and satisfaction of my job while I was working for [the U.S. governmental agency] for over three years. I would report any contact for espionage to the FBI. I would report any hostage threat made against [me] or my family to the FBI. I am not a security risk to the U.S. DOD because I believe in U.S. values of freedom and democracy and the pursuit of happiness. I love this country and will serve it with honor and dignity.

Applicant traveled to Syria during December 1998 - January 1999 to visit his family. Not yet a U.S. citizen, he used his Syrian passport and his U.S. resident alien identification card (a/k/a the green card) for this trip. Applicant traveled to Syria during September - October 2001 to visit his family. He used his U.S. passport for this trip. In his response to the SOR, Applicant said he has no plans to travel to Syria in the future. Applicant did not indicate, in his response to the SOR, if he has or has not relinquished or surrendered his expired Syrian passport.

Applicant has several family members who are Syrian citizens and residents. His family ties to Syria are described as follows:

1. His parents are essentially retired, but still own a small electronic shop. His mother is 69 years old and she has suffered from Parkinson's disease for the last ten years. His father is 76 years old.
2. His sister is a housewife and she also takes care of Applicant's parents. His sister's husband works as an interior designer.
3. His aunt works as a secretary in a small auto-parts store. His uncle runs a small bus-rental business. Applicant has had no contact with his aunt and uncle for about ten years.

In his response to the SOR, Applicant explained that his family in Syria is a traditional Armenian Christian family, which means they are neither Arab nor uslim. Applicant also explained his family members speak little of the Arabic language, and their day-to-day contact with others is normally limited to fellow Armenians.

Concerning Syria, Department Counsel included Items 6, 7, and 8, in the FORM. These documents are various U.S. Government reports concerning Syria, which I have reviewed and considered. In particular, I have taken administrative notice of the specific areas highlighted below:

1. The U.S. Department of State has designated Syria as a state sponsor of international terrorism (Item 7).
2. Syria has provided safehaven and support to several terrorists groups, some of which maintained training camps or other facilities on Syrian territory (Item 7).
3. Syria has been under a state of emergency equivalent to martial law since 1963, except for a brief period in 1973 - 1974. In its annual 2001 report to Congress on human rights practices (published in April 2002), the U.S. State Department commented that the human rights situation in Syria remained poor, and that the government continued to restrict or deny fundamental rights, although a few areas saw improvement (Item 8).

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

In August 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC3I), ⁽³⁾ issued a policy memorandum--the so-called Money Memorandum, because it is signed by Assistant Secretary Arthur L. Money--clarifying the application of the foreign preference security guideline for cases involving possession and/or use of a foreign passport. In pertinent part, the Money Memorandum "requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains approval for its use from the appropriate agency of the United States Government." This policy applies to an applicant's possession of any foreign passport regardless if it has expired. ⁽⁴⁾

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽⁵⁾ There is no presumption in favor of granting or continuing access to classified information. ⁽⁶⁾ The government has the burden of proving controverted facts. ⁽⁷⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence. ⁽⁸⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard. ⁽⁹⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence." ⁽¹⁰⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him. ⁽¹¹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹²⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽¹³⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting

national security.

CONCLUSIONS

Based on the record evidence as a whole, I am unable to conclusively determine if Applicant still has the expired Syrian passport, as he may have relinquished it as mentioned in his written statement. If he still possessed it, this case would fall under the *per se* rule imposed by the Money Memorandum. Because the evidence is inconclusive on this point, and because possession of the passport is not alleged in the SOR, this issue is not before me for decision.

Under Guideline B for foreign influence, a security concern 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 U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. In addition, common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service.

Here, based on the record as a whole, the government established its case under Guideline B. Applicant has family ties to Syria, as evidenced by his mother, father, sister, aunt, and uncle who are Syrian citizens and residents. By contrast, Applicant has no family ties to the U.S. The strength of the ties to Syria is further demonstrated by Applicant's trips to Syria in 1998 - 1999 and 2001 to visit his family members. These circumstances raise a security concern under DC 1. [\(14\)](#)

Concerning Applicant's employment with a U.S. governmental agency in Syria (alleged in subparagraph 1.b), that matter does not invoke any disqualifying condition under Guideline B, and it does not, in my view, raise a foreign influence security concern. Indeed, Applicant's work as an information specialist made him part of a team whose task it was to communicate and promote the U.S. Government's message to the Syrian media and public, which appears to be just the opposite of conduct raising a concern for foreign influence. Presumably, his interaction and contacts with Syrian citizens as part of his work was at the behest of the U.S. Government. Given these circumstances, subparagraph 1.b is decided for Applicant.

I have reviewed the mitigating conditions under Guideline B and conclude none apply. The only MC deserving serious consideration is MC 1, [\(15\)](#) but it does not apply. It appears that none of the family members are agents of the Syrian government or any other foreign power. [\(16\)](#) But that does not end the analysis, as Applicant must show his family members in Syria are not in position to be exploited.

In deciding if an applicant has met the second prong of MC 1, it is proper to consider how the foreign country at issue is governed. The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes it is nonsensical to treat North Korea as if it were Norway. Here, we know that the U.S. State Department regards Syria as a state sponsor of international terrorism, and thus, by implication is hostile to the U.S. We also know Syria is ruled by a government with a poor record of human rights. Given these circumstances--which are beyond Applicant's control--the presence of Applicant's family members, especially his mother and father, in Syria places them at risk of being brought under control or used as a hostage by a Syrian intelligence or security service. Unfortunately, Applicant's family members in Syria are in a position where there is a potential for them to be exploited in a way that could force Applicant to choose between loyalty to his family members and the interests of the U.S. Accordingly, Applicant is unable to successfully mitigate the security concern, and Guideline B is decided against him.

To conclude, Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

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

SOR ¶ 1-Guideline B: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: For the Applicant

Subparagraph c: 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. Clearance is denied.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. The FORM contains several documents identified as Items 1 - 8 for consideration.

3. This position is now the Under Secretary of Defense for Intelligence or USD(I), and serves as the Secretary's principal advisor on intelligence matters.

4. ISCR Case No. 01-24306 (September 30, 2003) at p. 5 (Keeping a foreign passport until it expires does not satisfy the surrender requirement set forth in the oney Memorandum).

5. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

6. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.

7. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

8. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

9. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

10. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

11. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

12. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

13. *Egan*, 484 U.S. at 528, 531.

14. 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.

15. 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.

16. *See* 50 U.S.C. § 1801(b).