

KEYWORD: Foreign Influence; Foreign Preference; Personal Conduct

DIGEST: Applicant, a naturalized United States (U.S.) citizen born in the Syrian Arab Republic, maintains close family ties with seven relatives who are citizens and/or residents of the Syrian Arab Republic or the Republic of Lebanon. Even though Applicant is considered trustworthy and a good worker at the job, the persistent risk of foreign influence established by his close family members has not been mitigated. However, the destruction of Applicant's identification card eliminates the security concern raised by the factual allegation under foreign preference. Finally, Applicant's reasonable explanation for omitting material information from his security clearance questionnaire in February 2001 warrants a finding in Applicant's favor under the personal conduct guideline. Clearance is denied.

CASENO: 02-29662.h1

DATE: 01/31/2005

DATE: January 31, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-29662

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

## **FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

## **FOR APPLICANT**

Jon L. Roberts, Esq.

## **SYNOPSIS**

Applicant, a naturalized United States (U.S.) citizen born in the Syrian Arab Republic, maintains close family ties with seven relatives who are citizens and/or residents of the Syrian Arab Republic or the Republic of Lebanon. Even though Applicant is considered trustworthy and a good worker at the job, the persistent risk of foreign influence established by his close family members has not been mitigated. However, the destruction of Applicant's identification card eliminates the security concern raised by the factual allegation under foreign preference. Finally, Applicant's reasonable explanation for omitting material information from his security clearance questionnaire in February 2001 warrants a finding in Applicant's favor under the personal conduct guideline. Clearance is denied.

## **STATEMENT OF CASE**

On January 8, 2004, 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, amended April 4, 1999, issued a Statement of Reasons (SOR) to 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished his answer to the SOR on March 29, 2004. Applicant elected to have his case decided on a written record without a hearing. The Government provided Applicant a copy of the File of Relevant Material (FORM) on June 25, 2004. Applicant received the FORM on July 1, 2004. His response to the FORM was due by July 31, 2004. No response was received. The case was assigned to me on September 7, 2004.

## FINDINGS OF FACT

The SOR alleges foreign influence (Guideline B), foreign preference (Guideline C), and personal conduct (Guideline E). Applicant admitted all the factual allegations except for subparagraph 1.d. Applicant denied 1.d. claiming he was referring to four "friends" and not "cousins" during the interview in July 2002 with the investigator. Applicant noted he does have two cousins on his mother's side that he has contacts with about two or three times a year. Applicant is 39 years old and has been employed as a practice manager/engineer by a defense contractor for about six years. He seeks a secret security clearance; he has held a security clearance since June 1996.

Applicant was born in the Syrian Arab Republic on January 1, 1965. Between August 1987 and August 1989, Applicant was employed as a program analyst automating student records for a Syrian college of civil engineering, a government institute. <sup>(1)</sup> The record seems to indicate Applicant immigrated to the U.S. in 1989 because he started college in 1990. On December 28, 1990, Applicant married his wife (a U.S. citizen) in the U.S. Shortly after receiving his U.S. citizenship on November 3, 1994, Applicant graduated on December 15, 1994, from a four-year university with master's in science degree. Applicant currently has only a U.S. passport.

**Foreign Influence.** Applicant's father, sister, and step-mother are citizens of and currently residing in the Syrian Arab Republic. His father, who is 73 years old and retired from a Syrian oil company, still may rely on support from the Syrian government. Applicant's sister is 44 years old and a homemaker along with his 71-year-old step-mother.

Applicant's step-father (64 years old) and two step-brothers (34 and 29 years old) are citizens of and currently residing in Lebanon. According to his answer to the SOR, Applicant's step-father is 64 years old and his two step-brothers are self-employed at a steel manufacturing and distribution company. No additional information was provided.

Applicant's mother, 60 years old, is a citizen of the Syrian Arab Republic currently residing in Lebanon.

Applicant has four friends (not cousins) he maintains contact with (subparagraph 1.d.); two of those four friends are in Saudi Arabia, one friend is in the Syrian Arab Republic, and one in the United Arab Emirates. Applicant maintains contact with these friends about twice a year. No additional information was provided regarding these friends., Applicant has had no contact with his cousins on his father's side in over ten years. He also has two cousins on his mother's side he has contacted two or three times in over ten years.

Subparagraph 1.e. indicates Applicant sends \$600.00 every three months to his father in the Syrian Arab Republic. Applicant earns \$110,000.00 a year. Applicant does not have any foreign financial interests or real property in the Syrian Arab Republic, the Republic of Lebanon, or any other country except the U.S. No other information was provided.

As set forth in subparagraph 1.f., Applicant was employed as either a programmer or an assistant professor at the University of Damascus from August 1987 to August 1989.

As set forth in subparagraph 1.g., Applicant traveled to the Syrian Arab Republic in June 1997, June 1999, and August 2001. He traveled to the Republic of Lebanon (1.h.) in June 1999 and August 2001. He plans to return (1.i.) to the Republic of Lebanon and the Syrian Arab Republic every year to visit family. Applicant has always complied with security requirements relating to foreign travel.

**Foreign Preference.** Applicant was interviewed by Defense Security Service (DSS) on July 12, 2002, and indicated when he was sixteen years old, he received a Syrian identification card (subparagraph 2.a.) that was necessary for visits to Syria. Applicant explained the card was a consequence of his family and roots in the country and was utilized to simplify travel. Applicant explained in his answer to the SOR that there is no formal process to dispose of the card so recently he cut the card in half and attached it to his answer to the SOR. [\(2\)](#)

Applicant claims his only preference is for the U.S. Government as provided for in the Oath of Allegiance he recited when he became a citizen in December 1994. Applicant's dual citizenship, he contends, is based on his parents' citizenship in Syria. When Applicant took the Oath of Allegiance, he claimed he formally revoked his citizenship to the Syrian Arab Republic and any other foreign country.

**Personal Conduct.** Applicant executed a security clearance questionnaire on February 17, 2001. In response to question 16 requiring information about foreign countries visited (other than those identified in models 4, 5, and 6) in the last seven years on other than official U.S. Government orders, Applicant answered "yes" and listed Germany and Austria in 2000, Bermuda in 1999, and Egypt in 1995. Applicant failed to list his trips to the Syrian Arab Republic and Lebanon. Applicant contends that after reviewing his U.S. passport, he realized he forgot to disclose his family-related travel. Applicant revealed the additional trips to an investigator from the Defense Security Service before being confronted with contradictory information.

**Character Evidence.** The vice president of Applicant's employer was Applicant's immediate supervisor from January 1999 to January 2001, and from September 2003 to the present. Whenever Applicant traveled to the Middle East to visit his family, he always advised the vice president of his whereabouts. Applicant will continue to report his travel and any unusual events as a consequence of the travel.

**Official Notice.** The Syrian Arab Republic is a mixed sector economy that has undergone several social and economic reforms since the present regime came to power in July 2000. Nevertheless, the current regime is still designated by the Department of State as a state sponsor of terrorism that is hostile to the national security interests of the U.S. The Republic of Lebanon is a constitutional republic recovering from a long civil war. Though not designated as a sponsor of terrorism, the Department of State keeps the security situation under close review. Though several terrorist organizations have been outlawed by the Lebanese government, the organizations still maintain a presence in various parts of the country.

## **POLICIES**

Enclosure 2 of the Directive sets forth policy conditions which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent criterion; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

### **Foreign Influence**

#### Disqualifying Conditions (DC):

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.

Mitigating Conditions (MC):

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 U.S.;
3. Contact and correspondence with foreign citizens are casual and infrequent.

**Foreign Preference**

Disqualifying Conditions (DC):

1. The exercise of dual citizenship;

Mitigating Conditions (MC):

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country;
2. Indicators of possible foreign preference occurred before obtaining U.S. citizenship;
4. Individual has expressed a willingness to renounce dual citizenship.

## **Personal Conduct**

### **Disqualifying Conditions (DC):**

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire to determine employment qualifications, or determine security clearance eligibility or trustworthiness.

### **Mitigating conditions (MC):**

3. The individual has made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

## **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 16 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and, (9) the likelihood of continuation or recurrence.

## **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish a case under foreign influence (Guideline B), foreign preference (Guideline C), and personal conduct (Guideline E) which establishes doubt about a person's judgment, reliability and trustworthiness.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

### CONCLUSIONS

Security concerns are activated when a individual's immediate family, including cohabitants, and other persons to whom her or she may be bound by affection, influence, or obligation are not citizens of the U.S. or may be subject to duress. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual vulnerable to coercion, exploitation, or pressure.

With the exception of subparagraph 1.f., the government has established a *prima facie* case under DC 1 of the foreign influence guideline based on Applicant's close ties of affection to foreign citizens who are his father, sister, step-mother, step-father, two step-brothers, and his mother. His father, sister, and step-mother are citizens of and currently residing in the Syrian Arab Republic. Applicant provides \$600.00 every three months to his father who resides in the Syrian Arab Republic. His step-father and two step-brothers are citizens and residents of the Republic of Lebanon while his mother, a citizen of the Syrian Arab Republic, currently is a resident of the Republic of Lebanon. In addition to the familial ties to both countries, Applicant's past trips to both countries on seven occasions in the past seven years and intention to visit family in the future increases his vulnerability to coercion and pressure by a foreign government. Because Syria has been designated as a sponsor of terrorism, Applicant bears a heavy burden of demonstrating his family ties do not raise security concerns under MC 1 of the foreign influence guideline.

Accordingly, Applicant must adduce substantial evidence under MC 1 to establish his immediate family members are not agents of a foreign power nor 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 U.S. While no evidence has been presented indicating that anyone of his immediate family members are agents of a foreign power (1.a., 1.b., and 1.c.), the record contains insufficient evidence to support Applicant's heavy burden of demonstrating his close family members in the Syrian Arab Republic and to a lesser extent Lebanon, are not in a position to be exploited by a foreign power in a way that could force Applicant coercively or non-coercively to choose between loyalty to the family member(s) and the U.S. MC 3 is also unavailable to sufficiently eliminate the vulnerability risk posed by Applicant's close family ties as the Appeal Board has held in ISCR Case No. 00-0484 that there is a rebuttable presumption an applicant's contacts with his immediate family members are not casual and infrequent.



On the other hand, Applicant's contacts with his four friends falls outside DC 1 of the foreign influence guideline because the four friends are not immediate family members or people Applicant has close ties of affection. Moreover, his contact with these friends is casual and infrequent within the meaning of MC 3. Similarly, Applicant's ties to his distant cousins, whom he has not seen in ten years, is also mitigated under MC 3 because of the casual and infrequent nature of the contact. (MC 3)

**Foreign Preference.** Security concerns are raised when an individual acts in a way that indicates a preference for a foreign country over the U.S. A citizen of the Syrian Arab Republic by birth, Applicant immigrated to this country in 1989, received his master's degree in science in November 1994, and then received his U.S. citizenship in December 1994. Even though Applicant never used his Syrian passport after it expired in 1995, until recently he still had a Syrian identification card that was necessary on previous trips to the Syrian Arab Republic. While Applicant explains the identification card was a consequence of his parents' roots in the country designed to simplify travel, the necessity of the card (in addition to the U.S. passport) on trips to the Syrian Arab Republic raises doubt about Applicant's preference to the U.S. and could lead to (2) foreign travel unverifiable by the U.S. or (2) obtaining a benefit from a foreign country, e.g., educational, medical, or social, he would otherwise not be entitled to without the card. In sum, possession of the card and indicating he was a dual citizen on his SCA in February 2001 constitutes evidence of the exercise of his foreign citizenship under DC 1.

The foreign preference concerns are sufficiently mitigated by MC 1 and MC 4. Though Applicant's dual citizenship was originally based on his birth in a foreign country, MC 1 does not mitigate the adverse evidence under DC 1 due to the identification card. But Applicant's cutting in half and surrender of his identification card has removed the risk of unverifiable travel or taking advantage of any other benefit linked to Applicant's possession of the identification card. Giving up the card plus his repeated statements of having allegiance only to the U.S. persuades me to find in Applicant's favor under the foreign preference guideline. (MC 4)

Applicant's employment from August 1987 to August 1989 at the University of Damascus (1.f.) as a programmer or an assistant professor has more contextual relevance under the foreign preference guideline. The foreign employment is indicative of foreign preference that occurred about five years before Applicant received his U.S. citizenship. Hence, his employment in the Syrian Arab Republic is mitigated under MC 2 of the foreign preference guideline.

**Personal Conduct.** The security concern of the personal conduct guideline is poor judgment or dishonesty demonstrated during the course of the security investigation. Applicant's omission of all trips to the Syrian Arab Republic and Lebanon represents the omission of material information under DC 2 of the personal conduct guideline. Though question 16 of the SCA uses straightforward words in seeking information about visits to foreign countries, Applicant claimed he did not think the question sought information about family-related travel. I find his claim reasonable. Having weighed and balanced the FORM with Applicant's statements, I conclude Applicant has presented a reasonable explanation that persuades me he did not deliberately conceal the information. Moreover, he provided all information regarding his trips to the Middle Eastern countries before being confronted by information indicating he had taken those trips. (MC 3)

The unfavorable decision under foreign influence and favorable decisions under foreign preference and personal conduct have also included consideration of this case under the whole person concept. Applicant has failed to present evidence in rebuttal, extenuation or mitigation sufficient to overcome the risk of foreign influence posed by the foreign citizenship and/or residency of his close family members.

### **FORMAL FINDINGS**

Paragraph 1: (foreign influence, Guideline B): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. For the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.

Paragraph 2: (Foreign Preference, Guideline C): FOR THE APPLICANT.

- a. For the Applicant.

Paragraph 3: (Personal Conduct, Guideline E): FOR THE APPLICANT.

a. For 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 Applicant a security clearance.

Paul J. Mason

Administrative Judge

1. However, Applicant avers in his answer to the SOR that he was an assistant professor at the university.
2. A copy of the identification card is attached to Applicant's answer to the SOR.