

DATE: November 18, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29727

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Jason R. Perry, Esq., Department Counsel

Erin C. Hogan, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the foreign influence security concern based on his significant family ties to Syria. In addition, Applicant deliberately failed to reveal his possession of an active passport issued by a foreign government (Yemen) in response to a question on his security-clearance application and in a signed, sworn statement given to an investigator. Clearance is denied.

STATEMENT OF THE CASE

On April 14, 2004, 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 security concerns under Guideline C for foreign preference, Guideline B for foreign influence, Guideline E for personal conduct, and Guideline J for criminal conduct. Applicant's written Answer to the SOR, dated May 3, 2004, is mixed; he also requested a hearing.

Department Counsel indicated he was ready to proceed on June 29, 2004, and the case was assigned to me July 7, 2004. A notice of hearing was issued July 14, 2004, scheduling the hearing for August 3, 2004. Applicant appeared without counsel and the hearing took place as scheduled.

Government Exhibits 1 - 9 and Applicant Exhibits A - KK were admitted into the record evidence. In particular, Government Exhibits 4 - 8 were admitted for the limited purpose of taking administrative notice of certain matters contained therein. Applicant called four character witnesses, and he testified as well. I received the hearing transcript on August 20, 2004.

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 essential findings of fact:

Applicant is a 39-year-old married man who was born in Yemen in 1965. He is a contract employee working as a linguist translating documents from Arabic to English. Applicant has performed his duties, often in a high-pressure environment with short deadlines, in an outstanding fashion (for example, Exhibits A, D, E, F, and I). In particular, Exhibit A is a character reference from a senior official within the Office of the Secretary of Defense, and I have given it due consideration. His four character witnesses all vouched for Applicant as a hardworking and trustworthy person. This is the first time Applicant has applied for a security clearance.

In December 1993, Applicant married a native-born U.S. citizen. Based on this marriage, Applicant was allowed to enter the U.S. in May 1994. He became a naturalized U.S. citizen in June 1998. Applicant enlisted in the U.S. Army serving from November 1994 until his honorable discharge in November 1998. Also in November 1998, Applicant obtained a divorce from his first wife. Applicant's military service is noteworthy as evidenced by the numerous exhibits he submitted showing meritorious performance of duty. His assignments included serving as the senior military instructor and language program manager for a special forces group.

In March 1999, Applicant enrolled in a state university where he studied international relations. He was awarded an M.S. degree in international relations in October 2000. He was a very skilled and capable student as evidenced by an overall GPA of 3.75 on a 4.00 scale (Exhibit CC).

When Applicant first entered the U.S., he did so using a passport issued from his country of birth, Yemen. The Yemeni passport was issued to him in approximately April or May 1994, and was valid for a number of years. Applicant applied for and was issued a renewal of his Yemeni passport on June 6, 2001, with an expiration date of June 6, 2007.

On November 2, 2001, approximately five months after his Yemeni passport was renewed, Applicant submitted his security-clearance application (Exhibit 1). The application required Applicant to provide detailed information about various matters, and his application reveals a high level of attention to detail. For example, Question 11 concerns employment activities, and Applicant was quite meticulous in providing his employment history from the previous seven years. Of concern here is Question 17, which asks four separate questions about foreign activities, and Applicant responded negatively to all four questions. In response to Question 17d (*In the last 7 years, have you had an active passport that was issued by a foreign government?*), Applicant responded no. This question required Applicant to reveal if he had an active foreign passport going back to approximately November 1994.

In July 2002, Applicant was interviewed by a special agent of the Defense Security Service as part of the routine background investigation. That interview resulted in Applicant signing a sworn statement (Exhibit 2). The sworn statement addressed various aspects of Applicant's foreign connections, including the foreign passport as follows:

I do have a Yemen passport, but I believe it has expired. I believe it was issued in 1994 and believe it was valid for four or five years. I used this passport to come to the U.S. and have not used it since that time. Previously, I did use the passport to travel to Syria one time. I will relinquish this passport even though I believe it is expired. I did attempt to relinquish it to the INS, but was told they could not accept the passport. I will contact the Yemen consulate to attempt to relinquish it.

After being discharged from the Army in 1998, Applicant made four trips to Syria, the most recent trip took place in 2002. As he had obtained U.S. citizenship in June 1998, Applicant possessed a U.S. passport during these trips. During 2000, Applicant made two trips to Syria. The first was for his wedding in January 2000, and the second was a few months later to escort his wife from Syria to the U.S. after she had obtained the necessary travel documents. During the first trip in 2000, Applicant had his Yemeni passport in his possession, although he used his U.S. passport to enter and exit the U.S. and Syria. He used the Yemeni passport to facilitate his marriage, as he understood it was more difficult for a U.S. citizen to marry an Arab woman in Syria. During the holiday season during November - December 2002, Applicant and his wife traveled to Syria for a family visit. Applicant used his U.S. passport for this trip, but he also had his Yemeni passport in his possession.

In November 2003, a DOHA personnel security specialist issued interrogatories to Applicant (Exhibit 3). In response to

the interrogatories, Applicant provided a copy of his Yemeni passport, which was issued to him in June 2001. In doing so, Applicant offered the following explanation, in part, as follows:

When the interview with the Special Agent of the Defense Security Service took place in July of 2002, I had recently moved from Florida. Most of my personal belongings, including my personal records were then secured in boxes and stored in a storage room back in . . . Florida. The fact that the Yemeni passport was renewed had totally skipped my mind due to the stress of keeping up with the sudden move and many subsequent issues that I had to deal with. In the process, and during the interview, I made a mental note (thinking out loudly) that the passport is expired. At the time, I could not locate it and could not help thinking it was still expired. This was purely a mental oversight, and at the time, I had no doubt in my mind that the passport was expired. I never intended at any time or in any manner to hide any pertaining information or provide misleading or inaccurate information.

In response to a question asking why he answered no to Question 17d, which concerned having an active foreign passport in the last seven years, Applicant provided the following explanation:

This is an embarrassing coincidence. What happened then is that I made an inevitable human mistake marking the no block while answering a series of questions where the expected answer for each question was "no." I could not have intentionally marked this block as (no) simply because of the 7-year period covered in the question.

On or about April 20, 2004, after the SOR was issued to him, Applicant surrendered his active Yemeni passport, issued June 6, 2001 (Exhibit B). He did so by returning the passport to Consulate Section of the Yemeni Embassy located in Washington, D.C. Applicant also testified he told officials at the embassy he wanted to renounce his Yemeni citizenship.

Applicant married his current spouse in January 2000 in Damascus, Syria. His wife is a Palestinian national born in Syria in 1979. Applicant's spouse has obtained U.S. resident alien status, and her application for U.S. citizenship is pending (Exhibits C, G, and H).

Applicant has family members who are foreign nationals residing in foreign countries. Applicant's parents and five siblings are Yemeni citizens living in Damascus, Syria. Applicant's father is not employed and his mother is a housewife. Applicant's three brothers reside with his parents. One brother has a privately owned shop where he fixes computers. Another brother is a musician. The third brother is a student. One sister resides with her parents and she works in a hair salon. The other sister is married and lives with her husband. Applicant's parents-in-law also reside in Damascus. Applicant's in-laws are Palestinian nationals born in Syria. The father-in-law works as a teacher for a public school. One brother-in-law, whom Applicant has never met, lives in the United Arab Emirates (UAE). The other brother-in-law lives with his parents in Damascus. Applicant has a close relationship with his immediate family members, but his relationship with his in-laws is rather formal and distant. None of Applicant's family members are employed by the Syrian government or any other foreign government.

Since 1994, Applicant provided \$2,000 to \$3,000 in financial support to his parents. He does so by sending small amounts, usually \$100, to his parents. Applicant has no financial interests in Syria or Yemen.

While living in Florida, Applicant met a person who is a citizen of Saudi Arabia and serves as an officer in the Saudi military. Applicant denies this person is a friend, and he denies any ongoing contact with this person.

As requested by Department Counsel, I took administrative notice of certain facts concerning Yemen and Syria as specified by Department Counsel in Exhibits 4, 5, 6, 7, and 8. ⁽²⁾ Three specific areas are highlighted as follows:

- Syria is on the U.S. State Department's list of state sponsors of terrorism.
- Syria has a poor record of human rights.
- The U.S. Government is concerned about arms proliferation in Syria, including its efforts to develop weapons of mass destruction.

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), 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."

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.⁽³⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than a preponderance of the evidence.⁽⁶⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ 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.⁽⁹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

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."⁽¹¹⁾ 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

1. Guideline C-Foreign Preference

Under Guideline C, a security concern may exist when a person acts in such a way as to indicate a preference for a foreign country over the U.S. In particular, the exercise of dual citizenship raises a security concern because the active exercise of foreign citizenship may indicate a preference for that foreign country over the U.S. Of course, dual citizenship by itself is not automatically a security concern. Absent the exercise of dual citizenship or indicia of some affirmative action demonstrating foreign preference, mere possession of foreign citizenship by virtue of birth does not fall within the scope of Guideline C.

Here, based on the record evidence as a whole, the government has established its case under Guideline C. By his actions, Applicant exercised dual citizenship by renewing and possessing a Yemeni passport after obtaining U.S. citizenship. By doing so, Applicant demonstrated a preference for Yemen. He also used his Yemeni passport to facilitate his marriage in Syria to his current wife. Under these circumstances, DC 1⁽¹²⁾ and DC 2⁽¹³⁾ apply against Applicant. But given he surrendered the Yemeni passport, he has complied with the Money Memorandum, which requires a clearance be denied or revoked based on possession of a foreign passport, regardless of whether it has expired.⁽¹⁴⁾

Turning to the mitigating conditions under Guideline C, MC 1⁽¹⁵⁾ applies because his dual citizenship is based on his birth in a foreign country.⁽¹⁶⁾ MC 2⁽¹⁷⁾ does not apply because the disqualifying behavior at issue took place after Applicant became a U.S. citizen. MC 3⁽¹⁸⁾ does not apply based on the facts and circumstances here. Finally, MC 4⁽¹⁹⁾

applies because Applicant is willing to renounce his Yemeni citizenship.

Applicant has lived in the U.S. since 1994, served honorably in the U.S. Army for four years, and became a U.S. citizen in 1998. And the fact Applicant surrendered his Yemeni passport and is willing to renounce his Yemeni citizenship are clear, logical, and convincing reasons indicating his preference is for the U.S. and not Yemen. Given these circumstances, Applicant has successfully mitigated the security concern, and Guideline C is decided for Applicant.

2. Guideline B-Foreign Influence

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 has established its case under Guideline B. Applicant has close and continuing family ties to Syria, as evidenced by his immediate family members who are residents in Syria. His in-laws are also foreign nationals living in Syria. The strength of the ties is further demonstrated by (1) Applicant's trips to Syria for family visits, including his wedding, and (2) his financial support to his parents. These circumstances raise a security concern under DC 1. ⁽²⁰⁾ Given he has never met his brother-in-law who lives in the UAE (subparagraph 2.d), Applicant has rebutted the government's case for this subparagraph by showing he does not have close ties of affection or obligation to this person. This same can be said for the person who is a Saudi citizen (subparagraph 2.e).

I have reviewed the mitigating conditions under Guideline B and conclude none apply. The only MC deserving serious consideration is MC 1, ⁽²¹⁾ but it does not apply. It appears that none of the family members are agents of any foreign power. ⁽²²⁾ 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 Syria is a state sponsor of terrorism, and is ruled by a government with a poor record of human rights. We also know Syria is making efforts to acquire weapons of mass destruction. Given these circumstances, the presence of Applicant's immediate family members and his wife's immediate family members in Syria puts them at risk of being brought under control or used as a hostage by a Syrian intelligence or security service, or a terrorist group. Unfortunately, these family members 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.

3. Guideline E-Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully. Omission of a past arrest or past drug use, for example, is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or thought the arrest had been expunged from the record and did not need to be reported.

Here, based on the record evidence as a whole, the government has established its case under Guideline E. In response to Question 17d, Applicant answered in the negative. He should have disclosed both active Yemeni passports he possessed within the last seven years, the second of which he obtained in June 2001, about five months before he completed the security-clearance application. Likewise, he should have disclosed the renewed passport in his sworn

statement of July 2002. Applicant has provided explanations for these matters, but his explanations are neither convincing nor credible.

Applicant's explanation for the security-clearance application--he mistakenly answered no to Question 17d after answering no to Questions 17a, 17b, and 17c--is not credible. Applicant was quite meticulous in completing his security-clearance application. It is difficult to believe Applicant, an intelligent person skilled in languages, mistakenly answered the question in haste. His claim of mistake is especially implausible considering he went through the process of renewing his Yemeni passport about five months before completing the application.

Likewise, his explanation for not revealing the renewed passport in his July 2002 sworn statement is not credible. It is simply implausible for Applicant to claim he genuinely forgot about the passport considering he went through the process of renewing it in June 2001, only 13 months beforehand. Indeed, a few months later in November - December 2002, Applicant took his renewed passport with him when he and his spouse traveled to Syria to visit family.

Given these circumstances, DC 2-(23) and DC 3-(24) apply against Applicant. I have reviewed the relevant mitigating conditions under the guideline and conclude none apply. Accordingly, Guideline E is decided against Applicant.

4. Guideline J-Criminal Conduct

Applicant's false answer on his security-clearance application and the false information he provided in his sworn statement constitutes a violation of 18 U.S.C. § 1001, which makes it a felony to make a false statement within the jurisdiction of a federal agency. Although Applicant was not charged with these two offenses in a court of law, the underlying conduct is still of concern in the security clearance process. (25) No mitigating conditions apply. Accordingly, Guideline J is decided against Applicant.

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 C: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

SOR ¶ 2-Guideline B: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

SOR ¶ 3-Guideline E: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

SOR ¶ 4-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. 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. Transcript at pp. 33-48.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
11. *Egan*, 484 U.S. at 528, 531.
12. E2.A3.1.2.1. The exercise of dual citizenship.
13. E2.A3.1.2.2. Possession and/or use of a foreign passport.
14. 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).
15. E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.
16. ISCR Case No. 99-0452 (March 21, 2000) at pp. 2-3 (Modifying its earlier rulings, the DOHA Appeal Board, in an expansive reading of MC 1, concluded the literal language of MC 1 allows it to be applied even when an applicant exercises foreign citizenship after becoming a U.S. citizen).
17. E2.A3.1.3.2. Indications of possible foreign preference (e.g., foreign military service) occurred before obtaining

United States citizenship.

18. E2.A3.1.3.3. Activity is sanctioned by the United States.

19. E2.A3.1.4. Individual has expressed a willingness to renounce dual citizenship.

20. 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.

21. 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.

22. *See* 50 U.S.C. § 1801(b).

23. 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

24. E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

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