

DATE: April 20, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15068

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Merrill B. Portney, Esq.

SYNOPSIS

Applicant, a Syrian native who became a United States naturalized citizen in April 1981, married a Syrian citizen in Syria in September 2002. A physician, she joined Applicant in the United States in November 2003. Foreign influence concerns persist because of this close relationship and the Syrian residency and citizenship of four of Applicant's sisters and the Lebanese citizenship and residency of another sister. He is unwilling to apply to formally renounce his Syrian citizenship out of fear it could place his foreign relatives in jeopardy. Clearance is denied.

STATEMENT OF CASE

On July 8, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which 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. ⁽¹⁾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 Influence (Guideline B).

On July 31, 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 October 1, 2003, and pursuant to formal notice dated October 22, 2003, a hearing was scheduled for November 18, 2003. By letter dated November 11, 2003, counsel for Applicant entered his appearance. At the hearing held as scheduled, the Government's case consisted of three exhibits, with Exhibit 2 admitted over Applicant's objection. Applicant and a coworker testified on Applicant's behalf, and he submitted one exhibit. A transcript of the hearing was received on November 28, 2003.

At the Government's request, administrative notice was taken of a U.S. Department of State release titled *Syria Country Reports on Human Rights Practices-2000*, dated February 23, 2001; a Congressional Research Service issue brief for Congress titled *Syria: U.S. Relations and Bilateral Issues*, updated September 17, 2003; and the Central Intelligence Agency's *The World Factbook - Syria*.

FINDINGS OF FACT

The SOR alleges Foreign Influence concerns related to the Syrian residency and citizenship of close family members (four sisters and his spouse, who he married in Syria in September 2002), the Lebanese citizenship and residency of another sister, and his close and continuing contact with three U.S. naturalized citizens born in Syria, India, and South Africa, respectively. In his Answer, Applicant admitted the factual allegations but he had submitted an immigrant petition for his spouse, who was interviewed in July 2003 for a K-3 visa expected to be issued within a month. Applicant planned to travel to Syria in August 2003 to assist his spouse with her travel to the U.S. 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 57-year-old senior electrical engineer who has been employed by the same defense contractor since January 1983. He seeks to retain his secret security clearance that he has held since May or June 1983.

Applicant is one of nine children born in Syria to resident citizens of that nation. In 1971, he earned a bachelor's degree in electrical engineering from the Egyptian university. In July 1973, Applicant came to the U.S. with a "green card" obtained through the American Embassy in Lebanon. He was sponsored by an older brother (deceased in 1984) who had come to the U.S. in the 1950s to attend college. Applicant entered the U.S. on a Syrian passport.

In September 1977, Applicant was awarded his master's degree in electrical engineering from a state university in the U.S. Applicant decided to pursue his career in the U.S., and in April 1981 he became a U.S. naturalized 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. Applicant considered himself solely a citizen of the U.S. thereafter and made no effort to determine whether his acquisition of U.S. citizenship automatically revoked his Syrian citizenship. Shortly after becoming a U.S. naturalized citizen, Applicant obtained a U.S. passport. He renewed it twice since, and currently possesses a valid U.S. passport issued July 1998. All foreign travel thereafter has been on his U.S. passport, including on trips to Syria to see relatives in July 1987, July 1988, October 1989, and December 2001; to Egypt in 1997; to Lebanon in 1998; and to Saudi Arabia for a two to three week pilgrimage in March 1999.

In November 1981 in Lebanon, Applicant married his first wife, an Egyptian native 11 years younger than he. She accompanied him to the U.S. and eventually acquired U.S. naturalized citizenship in September 1987. Three daughters were born to them in the U.S., in July 1983, October 1985, and February 1989, respectively.

In conjunction with a periodic reinvestigation into his background for his secret clearance, Applicant executed a security clearance application (SF 86) on arch 19, 2001. Applicant responded "No" to whether he was a dual citizen because he considers himself a citizen only of the U.S. With respect to his relatives and associates, Applicant listed his spouse, parents (both deceased), two sisters (resident citizens of Syria), and his in-laws (resident citizens of the U.S.). Applicant did not disclose any foreign travel on his SF 86.

In December 2001, Applicant traveled to Syria. Separated from his spouse by that time, Applicant went with the intention of meeting a woman who his family members had determined would be a suitable spouse for him. Applicant and this woman, a Syrian physician in private practice with hospital privileges in Syria, met several times during this visit. He liked her personality and their relationship continued after his return to the U.S. in January 2002.

On January 30, 2002, and February 7, 2002, a Defense Security Service (DSS) special agent interviewed Applicant in person, and on January 31, 2002, by telephone, about his foreign connections and travel. Advised by the agent that Syrian diplomatic officials had confirmed Syria requires a formal application for renunciation of its citizenship, Applicant stressed he is an American citizen and is no longer a citizen of Syria. Applicant was asked whether he would be willing to renounce his Syrian citizenship based on the procedures specified by the Syrian Embassy/Consulate. In response, he reiterated that he was not a citizen of Syria. Applicant denied any affiliation with a subversive organization or involvement in activities harmful to the U.S. Applicant volunteered that he and his spouse were divorcing, although they continued to reside at the same address. In response to the agent's inquiry into whether he had any other siblings, he disclosed he had eight siblings born in Syria (three now deceased), and that four of his five sisters were resident citizens

of Syria, the other a resident citizen of Lebanon. Applicant admitted having quarterly contact by telephone with his siblings in Syria. Applicant had no explanation for why he listed only two sisters on his SF 86 other than he believed he had included the other siblings on his application. Applicant provided information about three friends of foreign origin (Syrian, Indian, and South African), now all naturalized citizens, who he had listed as references on his SF 86. Acquainted with them through a local religious center since 1987/88, Applicant described contact with them weekly, and with the Syrian native also socially on a monthly to quarterly basis. Applicant was also asked about his foreign travels, and he disclosed trips to Syria in July 1987, July 1988, October 1989 and December 2001 to visit relatives; to Egypt in 1997; to Lebanon in 1998, and to Saudi Arabia in March 1999. He offered "no specific reason" for omitting his foreign travel over the 1997 to 1999 time frame that should have been listed.

Applicant was divorced from his first wife in August 2002. In September 2002, he traveled to Syria for his marriage to his current spouse. She remained in Syria after their wedding while he returned to the U.S. In late December 2002, Applicant went to Syria for a two-week stay to see his spouse and relatives. En route home from this trip in January 2003, he stopped in Lebanon to see one of his sisters, who lives there with her family. On February 8, 2003, Applicant filed with the U.S. Immigration and Naturalization Service an immigrant petition for his spouse.

In mid-March 2003, Applicant was asked by DOHA to answer interrogatories concerning his relationship with siblings and friends who reside in the Middle East, whether he had renewed his Syrian passport, and his foreign travels. On March 25, 2003, Applicant responded he has a normal family relationship with his four sisters in Syria and one in Lebanon (all housewives). He added he had remarried in September 2002 in Syria and his spouse was waiting for her visa to come to the U.S. Applicant disclosed travel to Syria twice since his DSS interview-for his wedding in September 2002 and then to visit his wife in December 2002.

On May 13, 2003, Applicant was advised that the INS had approved the petition filed by him on behalf of his spouse and that his spouse's case for a K3 visa would be processed by the U.S. Embassy in Syria. In August 2003, Applicant traveled to Syria with the intent of bringing his spouse back with him. Advised of a delay in the processing of her visa, Applicant returned to the U.S. without her after a two-week stay. While he was in Syria, Applicant resided with his spouse and her family. He visited his siblings in Syria on that trip.

Ten days before his security clearance hearing in November 2003, Applicant's spouse joined him in the U.S. On her arrival, Applicant's spouse contacted her parents by telephone to inform them she had arrived safely in the U.S.

Applicant's current spouse knows the name of the company for whom he works and that he has a security clearance for his duties. Applicant and his spouse have not discussed her financial assets. He is unaware whether she has an open bank account in Syria. Regarding her private medical practice, Applicant thinks she closed it or someone else took it over. Applicant's spouse has close family members (parents, three sisters, one brother) who are resident citizens of Syria. Her father is retired from his position as a professor at a Syrian university. Her mother is a housewife. To Applicant's knowledge, none of her siblings work for the Syrian government.

Four of Applicant's sisters are resident citizens of Syria. Sister #1, born in 1923, is a widow with seven or eight children, two living in Saudi Arabia, the others in Syria. One of her children is a physician who travels to the U.S. from Syria about once a year for conferences. Applicant sees this nephew in person or talks with him by telephone during the nephew's visits to the U.S. Applicant met with him in person most recently in 2001 or 2002. Applicant also talks with him by telephone a couple of times per year. Sister #2, born in 1925, is also a widow who has seven children, all living in Syria. Applicant has visited with her on his trips to Syria. Sister #3, a 74-year-old housewife and widow, visited Applicant in the U.S. in 1983, 1989, and about 1992, staying six months during her last stay and a couple of months the other times. Her two children live in Syria and in the United Arab Emirates, respectively. Applicant visited this sister on his trips to Syria. Sister #5 is a 62-year-old housewife living in Syria with her spouse, who owns a clothing factory. She visited Applicant in the U.S. with her spouse once in either 1977 or 1978. Applicant has telephone contacts with one or more of his siblings in Syria about four times per year.

Sister #4, born in 1937, is a resident citizen of Lebanon. She and her spouse (now deceased) stayed with Applicant in the U.S. in summer 2001 for about three weeks. Applicant visited this sister and her family in Lebanon in September 1998 and stopped to see this sister and her family in January 2003 en route home from his trip to Syria to see his spouse.

Applicant has telephone contact with this sibling and/or her three children once every couple of months.

Applicant has personal relationships with three foreign-born (Syria, India, South Africa) U.S. naturalized citizens who are physicians in the local area. He first became acquainted with them in 1987 or 1988 through the religious center they all attend. Applicant continues to have weekly contact with all three at the center. In addition, he has social contact (dinner together, visiting each other's residence) on a quarterly to monthly basis with the Syrian native.

Applicant considers himself to be a citizen only of the United States since his naturalization, but he is unwilling to apply to Syria for renunciation of Syrian citizenship as he fears for his family members in Syria should he do so. When he travels to Syria, his status as a U.S. citizen of Syrian birth is noted in his U.S. passport. He has no financial assets in Syria.

A coworker who worked directly with Applicant from 1997 to 1999, and since August 2002 on a support-as-needed basis, has found Applicant to be a diligent professional and trustworthy person.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

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.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

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.

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 guideline B:

Under the Foreign Influence guideline, a security concern may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she is 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. Contacts with citizens of other countries, or financial interests in other countries, are also relevant if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the Administrative Judge must consider the record evidence as a whole. 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 improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service.

Applicant is married to a Syrian citizen who joined him in the U.S. only ten days before his hearing.⁽²⁾ Although his parents and three of his eight siblings are deceased, Applicant has four sisters and nephews/nieces who are resident citizens of Syria. Another sister is a Lebanese resident citizen. Applicant has contact with one or more of his siblings in Syria at least quarterly by telephone and has visited with them on his trips to Syria, including recent trips in December 2001, September 2002, December 2002 and August 2003. He also speaks with his sister in Lebanon every couple of months and traveled to Lebanon to see her and her family in at least September 1998 and January 2003. Feelings of affection for his siblings are evident in the ongoing contact with them and in his unwillingness to file an application with Syrian authorities to formally renounce his Syrian citizenship, an action which he fears could jeopardize the security and/or safety of his sisters and their families in Syria. Furthermore, Applicant has ties of at least obligation if not affection to his in-laws in Syria. During his visit to Syria in August 2003, Applicant stayed with his spouse and her parents. The DOHA Appeal Board has held it reasonable for the Administrative Judge to consider the significance of an Applicant's spouse's ties to a foreign country and the possible effect they may have on an Applicant's contact under Guideline B (*see* ISCR 01-02452, November 21, 2002). In determining Applicant's suitability for continued access, disqualifying conditions 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*, and E2.A2.1.2.2., *sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for foreign adverse influence or duress exists*, are clearly pertinent. Moreover, Applicant's travels to Lebanon and Syria placed him within physical reach of foreign authorities, increasing his vulnerability to coercion, exploitation, or pressure by a foreign government (*see*

E2.A2.1.2.6.). Since Syria is known to sponsor international terrorism and to have a poor human rights record,⁽³⁾ Applicant bears a particularly heavy burden to demonstrate his family ties present an acceptable security risk.

Security concerns raised by the foreign citizenship and/or residency of Applicant's family members may be mitigated where it can be determined that they are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the family member and the United States (*see* E2.A2.1.3.1.). Applicant's sisters and mother-in-law are not employed outside of the home. His father-in-law may well have been an employee of the Syrian state when he was a professor at a Syrian university, but he has since retired. Applicant has a sufficiently close relationship with the nephew, who is a physician in Syria, to maintain contact by telephone or in person when this nephew comes to the U.S. for annual conferences. However, the record does not establish that this nephew, or indeed any other of Applicant's relatives living abroad, are now, or have ever been, agents of a foreign government, security or intelligence service. Applicant's spouse, a Syrian citizen, was a physician in private practice. From the recent grant to her of a visa for entry into the U.S., it is reasonable to infer that the U.S. Embassy officials found nothing in her background or activities that would indicate she was a foreign agent.

The analysis does not end with a determination that Applicant's relatives are not agents of 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. After weighing the evidence as a whole, I am unable to conclude that Applicant has met his "heavy burden" of demonstrating that his connections to Syria, and to a lesser extent Lebanon, do not pose a security risk. Applicant has significant ties to the U.S., as evidenced by his acquisition of U.S. naturalized citizenship in April 1981, his travel on a U.S. passport since he became a U.S. citizen, and his continuous employment with a U.S. defense contractor since 1983 with no apparent security violations. Yet when he was separated from his first wife, he looked to his family in Syria for a suitable spouse. Remarried in September 2002, Applicant testified to having little knowledge of his wife's financial situation, including of the salient facts surrounding her medical practice in Syria and whether she has any foreign bank accounts. Their physical separation until November 2003 does not adequately explain his failure to discuss significant issues with his spouse that could impact their personal situation as well as his security clearance. There is not enough information of record about his spouse's activities when she was in Syria for me to conclude that she is not vulnerable, and Applicant through the marital relationship, to undue foreign influence. Furthermore, it is reasonable to assume that Applicant's travel to Syria especially, but also to Lebanon (he has stopped en route from Syria in the past), will continue if not increase in frequency, since all of his spouse's immediate family members reside in Syria. The ties that bind are not all firmly rooted in the U.S. While Applicant has testified he would "*contact the authority right away*" if a family member were to tell him he or she had been approached or pressured because of his clearance, the DOHA Appeal Board has consistently held that a statement of intention about what an applicant will do in the future under some hypothetical set of circumstances is not entitled to much weight, unless there is record evidence that the applicant has acted in an identical or similar manner in the past under identical or similar circumstances. *See* ISCR Case No. 99-0501 (December 19, 2000); ISCR Case No. 01-26893 (October 16, 2002). With Applicant yet to provide a credible explanation for his omission of his foreign travel and several of his siblings from his SF 86, it is not at all clear that he can be counted on to recognize and respond appropriately to any undue influence by Syrian or Lebanese authorities. SOR subparagraphs 1.a. and 1.b. are resolved against him.

Applicant's friendships with three foreign-born U.S. naturalized citizens, including a Syrian native, who reside in his local area in the U.S. do not generate the same level of concern. Although Applicant shares similar religious beliefs with the Indian and South African born immigrants, and he listed them as character references on his SF 86, his contact with them is limited to once weekly at the center. A closer relationship with the Syrian native may be inferred from his social contact with him, including dinners and visits to each other's respective home. However, even with this individual, it is not clear that Applicant has a close enough bond to present the potential for adverse foreign influence or duress. SOR subparagraph 1.c. is found for Applicant.

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 B: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: 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 or continue a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of 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).
2. From the INS documents of record (Ex. A), it appears Applicant's spouse entered the U.S. on a K-3 (non-immigrant spouse) visa.
3. Per the U.S. Department of State's country report on human rights practices in Syria for 2000, the government of Syria continued to restrict or deny fundamental rights, although there were improvements in some areas. Freedom of movement remained limited. Syria's connections with terrorist activity and its role in Lebanon (troops stationed in Lebanon since October 1976) have resulted in sanctions against Syria, including no direct aid to Syria since 1981 and restrictions on bilateral trade between U.S. and Syria. *See* The Congressional Research Service's Issue Brief for Congress, titled *Syria: U.S. Relations and Bilateral Issues*, updated September 17, 2003.