

DATE: January 8, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23336

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a sister, brother-in-law, and sister-in-law in Syria and Lebanon, respectively. These relatives have financial interests or immigration intentions to the United States which make them vulnerable to coercion, exploitation, or pressure from these governments. Applicant did not mitigate the national security concerns. Clearance is denied.

STATEMENT OF THE CASE

On September 3, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personnel security Guideline B (Foreign Influence) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, notarized on September 18, 2003, Applicant responded to the SOR allegations. He requested a hearing. This case was assigned me November 24, 2003. A Notice of Hearing was issued on November 24, 2003, setting the hearing for December 2, 2003. An amended Notice of Hearing was issued on December 1, 2003, setting a new earlier time for the hearing on December 1st. On December 1, 2003, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented three exhibits which were admitted into evidence. Applicant appeared and testified, and offered two exhibits into evidence. I received the transcript (Tr.) of the hearing on December 18, 2003.

FINDINGS OF FACT

Applicant admitted all of the allegations contained in the SOR. Those admissions are incorporated herein as findings of

fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 55 years old and married. Applicant has two children, both of whom are enrolled in college. He immigrated from Syria in 1970 to study. He had one sister living in the United States at the time. Another sister and a brother immigrated later and live in the United States. Applicant became a citizen in 1980. He previously had a Department of Energy security clearance. (Tr. 9, 18, 19, 36, 44)

While studying for his undergraduate degree, Applicant worked during the day and attended college at night. Applicant worked hard after he came to the United States and was never out of a job. Applicant obtained a degree in mechanical engineering. (Tr. 18, 22, 36)

Applicant and his family are Armenian heritage Christians, not Muslims. Applicant saw no future for himself in a Syria controlled by a majority Baathist party and Muslim religious majority. His ancestors had been caught in the genocide against Armenian Christians in the post World War I era. (Tr. 9, 33, 34)

Applicant's sister in Syria is sick and remains there with her husband. Her husband is a U.S. citizen living in Syria. They came to the United States, he learned English, and he took the citizenship test. He became a U.S. citizen. Applicant's sister could not learn sufficient English to pass the citizenship exam. They returned to Syria because they had property, a home, and a business which they had to maintain or sell. They intended to sell everything and return to the United States, but have not been able to obtain what they regard as appropriate selling prices for the properties, so they remain in Syria. They have been in Syria for the past three years trying to sell the properties. Applicant's brother-in-law is 75 years old and a woodworker. Applicant's mother is living in Syria and is ill here. None of his relatives work for any foreign government. (Tr. 20, 22 to 24, 28, 30, 38, 41)

Applicant's wife has eight sisters, and seven of them live in the United States. The eighth sister lives in Lebanon with her husband, an electrician. She is 48 years old. Applicant does not have much communication with her. That sister wants to immigrate to the United States and needs a sponsor, and visited Applicant about four years ago. (Tr. 25, 26, 39, 40)

Applicant's other siblings live in the United States. His father is deceased. (Tr. 36, 37)

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

GUIDELINE B: Foreign Influence

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. Directive, ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (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. Directive, ¶ E2.A2.1.2.1.
- (2) Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists. Directive, ¶ E2.A2.1.2.2.
- (3) Relatives, cohabitants, or associates who are connected with any foreign government. Directive, ¶ E2.A2.1.2.3.

Conditions that could mitigate security concerns include:

- (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. Directive, ¶ E2.A2.1.3.1.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

The SOR alleged Applicant's sister is a Syrian citizen living in Syria married to an American citizen (¶ 1.a. and 1.b.). Furthermore, the SOR alleges Applicant's wife's sister is a citizen of Lebanon residing there (¶ 1.c.). Applicant admitted these allegations. Therefore, the Government proved all of these allegations. Disqualifying Condition (DC) E2.A2.1.2.1 applies. Applicant has three relatives, one of which is his sister, living in Syria and Lebanon. Those countries are identified as countries which harbor extremist and terrorist groups as determined by the U.S. Government. Applicant's relatives are members of an Orthodox Christian religion which is a minority in a Muslim country. These factors make Applicant's relatives vulnerable to coercion, exploitation, or pressure from a foreign country. Applicant's sister and brother-in-law in Syria are also trying to sell their business and property, which puts them in a vulnerable position.

The Mitigating Condition (MC) E2.A2.1.3.1 cannot be applied here. While Applicant's relatives are not agents of the Syrian or Lebanese governments, they are in positions to be exploited because of their financial interests, religion, and desire to return to the United States and live here. Those vulnerabilities could be used to influence Applicant. Therefore, the finding is against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the interest of national security to grant or continue a security clearance for Applicant.

Clearance is denied.

Philip S. Howe

Administrative Judge