

DATE: January 27, 2004

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-24254

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Robert R. Sparks, Jr., Esq.

SYNOPSIS

Applicant, a dual citizen of the U.S. and Syria, is a 44-year-old married man employed by a major defense and aerospace company as the director of advanced computing and robotics. He immigrated to the U.S. from Syria in 1979 to study engineering. He married a native-born U.S. citizen in 1983; he and his spouse have two children, both native-born U.S. citizens. He obtained U.S. citizenship in 1988, and he accepted employment in 1989 with the Department of Army as a civilian engineer. Granted a security clearance in 1990, Applicant worked for the Army until accepting his current employment in December 2000. The totality of facts and circumstances show that Applicant's connections to Syria do not pose an unacceptable security concern or risk of foreign influence under Guideline B. The foreign preference security concern under Guideline C is mitigated by Applicant's clear preference for the U.S. Clearance is granted.

STATEMENT OF THE CASE

On July 8, 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 security concerns under Guideline B for foreign influence and Guideline C for foreign preference.

Applicant answered the SOR on July 28, 2003, and he requested a clearance decision based on a hearing record. In his answer, Applicant admitted to the factual allegations, with one clarification, in SOR subparagraphs 1.a, 1.b, 1.c, 1.d, and 2.a.

On September 24, 2003, the case was initially assigned to another administrative judge, but it was reassigned to me September 26 to conduct a hearing and issue a written decision. Thereafter, on October 16, 2003, a notice of hearing was issued to the parties scheduling the hearing for Wednesday, October 29, 2003. Applicant appeared with counsel and the hearing took place as scheduled. DOHA received the hearing transcript November 6, 2003. A corrected page

number 78 of the transcript was received January 26, 2004.

PROCEDURAL MATTERS

At the close of hearing, I directed counsel for the parties to brief the following issue:

Is Applicant entitled--as a matter of law--to a favorable clearance decision based on Section 2-203 of the National Industrial Security Program Operating Manual (NISPOM), the so-called reciprocity provision?⁽²⁾

I raised this issue based on the record evidence that Applicant had been granted a security clearance in 1990 by the Department of the Army in conjunction with his employment from 1989 until December 2000. I have reviewed the post-hearing briefs on this matter, and I conclude Applicant is not entitled as a matter of law to a favorable clearance decision based on the NISPOM's reciprocity provision.

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:

In general, I find that the record evidence as a whole is sufficient to establish, by substantial evidence, the occurrence of all the factual events alleged in the SOR subparagraphs.

Applicant is a 44-year-old married man. He has two children, a 13-year-old son, and a 10-year-old daughter. His wife and children are native-born U.S. citizens. Both children attend public schools in the U.S.

Applicant has earned engineering degrees (a B.S.ME in 1986, an M.S.CE in 1989, and a Ph.D. in 1996) from U.S. universities. He is currently employed by a major defense and aerospace company as the director of advanced computing and robotics. He has worked for this company since December 2000. According to his supervisor, a senior vice president, Applicant has excelled at his job and was responsible for several successful projects (Exhibit B). He also has confidence in Applicant's integrity and ability to hold a security clearance.

In conjunction with his current employment, Applicant completed a security-clearance application (SF 86) (Exhibit 1) in May 2001 disclosing that he was born in Syria, has immediate family members in Syria, obtained U.S. citizenship in 1988, possesses a U.S. passport, holds dual citizenship with Syria, and worked as a civilian employee from July 1989 through November 2000 for the U.S. Army, which granted him a secret-level security clearance in 1990. He also disclosed traveling to Syria in 1994, 1996, 1998, and 2000; his most recent trip to Syria was in 2003. The purpose of his travel to Syria was to visit his mother and siblings.

Applicant's mother, three brothers, and one sister are citizens and residents of Syria. Applicant's second sister is also a Syrian citizen, but she has lived in Saudi Arabia since 1983. Applicant's father is deceased.

Applicant's mother is 82 years old and she is retired. Applicant calls his mother every month or every three weeks to check on her and visit. A typical conversation is five to ten minutes long.

Applicant's mother and one brother have visited Applicant once in the U.S. for about 30 days.

One brother owns a coffee shop in Syria. Applicant speaks to this brother a couple of times per year, by telephone, during holidays. Another brother works as an accountant for a local tax authority. Applicant speaks to this brother a couple of times per year, by telephone, during holidays. The third brother lives with Applicant's mother and he owns a computer training business. Applicant sometimes speaks to this brother when he telephones his mother.

Applicant's sister residing in Syria is a retired teacher. Her husband, Applicant's brother-in-law, is retired as well. The brother-in-law was the president of a leather tanning business, worked in the oil business, and also served as a business attache for the Syrian foreign service. Applicant has met his brother-in-law on two occasions during his trips to Syria. Applicant speaks to this sister if she is present when he calls his mother. Applicant's sister residing in Saudi Arabia is

married to a mechanic and auto-parts dealer. Applicant maintains contact with her when she calls every month or two.

Neither Applicant's mother nor siblings are connected to Syrian law enforcement, the military, or a governmental agency. Likewise, these family members are not involved in political, scientific, commercial, or other activities where they might benefit from obtaining U.S. national security or defense information.

In January 1979, the then 20-year-old Applicant arrived in the U.S. on a student visa to attend college. Applicant's father sent him to the U.S. to study as he did not want Applicant to be drafted into the Syrian armed forces. Applicant's father paid for tuition and expenses until Applicant completed his B.S. degree in 1986.

Applicant married his wife in 1983. Subsequently, he obtained resident alien status via his marriage to a U.S. citizen. In March 1988, he was granted U.S. citizenship. Previously, in July 1987, Applicant mailed his expired Syrian passport to the Syrian Embassy in Washington, D.C., and he has never tried to obtain another Syrian passport.

Upon completing his master's degree in 1989, Applicant and his spouse moved to their current state of residence and he started working for the U.S. Army as a research engineer. He continued his university studies part-time to obtain his Ph.D. He continued working as an engineer for the Army until December 2000 when he left federal employment.

During his years with the Army, Applicant was detailed or assigned to work outside the Army serving as deputy project manager for a Defense Department computing modernization program. He also served as a project manager for an agency that is the central research and development (R&D) organization for the Defense Department. Applicant has been formally recognized and awarded on several occasions for his outstanding duty performance as a federal employee (Exhibits A and B). For example, he received the *Engineer of the Year* award from a major Army command recognizing his expertise as the technical lead of a mobile bridge design that was used by allied forces to cross oil pipelines with armored vehicles during Operation Desert Storm. When Applicant left federal employment, his pay grade was GS-13 and he had held a secret-level security clearance without an adverse incident or concern. Indeed, Applicant served as a custodian of a container storing classified material from time to time (Transcript at pp. 72-73).

Since his arrival in the U.S. in 1979 until June 1994, Applicant elected not to travel to Syria. Upon his father's passing in 1994, Applicant decided he should visit his mother. He did so in 1994, 1996, 1998, and 2000, while working for the Army. He also traveled to Syria in 2003. The purpose of the trips was to visit his mother as well as his brothers and sisters. He used his U.S. passport, which is the only passport he possesses. Before each trip, Applicant obtained travel approval from the Syrian government via its embassy in Washington, D.C. The approval grants an exemption from compulsory military service since Syria still considers him to be a Syrian citizen first in the eyes of the law. Obtaining the approval is consistent with the strong suggestion or guidance from the U.S. Department of State (Exhibit 3, pages 1, 4). He experienced no problems or difficulties with Syrian governmental officials or anyone else during the trips.

Applicant has no financial interests in Syria, but he does have substantial financial interests in the U.S. His current salary is approximately \$120,000 annually, the market value of the family home is more than half-a-million dollars, and Applicant also has substantial assets in retirement and other investment accounts.

Applicant is willing to renounce his Syrian citizenship. He considers himself a U.S. citizen only and feels no sense of allegiance or obligation to Syria. He would bear arms only for the U.S., even against Syria if necessary. He travels to Syria only to visit his mother and anticipates doing so again as long as his mother is alive. He believes he has an obligation as a son to visit his mother.

Syria, also known as the Syrian Arab Republic, is a Middle East country that has a developing, mixed-sector economy (Exhibit 3). U.S.-Syrian relations have a history of difficulty and the U.S. continues to have serious differences with Syria (Exhibit 4). Syria did, however, cooperate with the U.S. as a member of the multinational coalition of forces in the first Persian Gulf War (Exhibit 4). Syria has been on the U.S. list of state sponsors of terrorism since the list's inception in 1979 (Exhibit 4, page 10). Syria continues to provide safehaven and support to terrorist groups (Exhibits 5 and 6). Syria is ruled by an authoritarian regime that exhibits the forms of a democratic system, but the President has almost absolute authority (Exhibit 4).

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. Considering the record evidence as a whole, the following adjudicative guidelines are most pertinent here: Guideline B for foreign influence and Guideline C for foreign preference.

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⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁵⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ 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.⁽⁸⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

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."⁽¹⁰⁾ 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. Foreign Preference Guideline

Under Guideline C for foreign preference, a security concern may exist when a person acts in such a way to indicate a preference for a foreign country over the U.S. In such situations, the person may be prone to provide information or make decisions that are harmful to the interests of the U.S. A security concern may be raised by, among other things, the exercise of dual citizenship or some affirmative action demonstrating foreign preference as opposed to mere possession of foreign citizenship by virtue of birth.⁽¹¹⁾

Here, based on the record as a whole, the government has established a *prima facie* case under Guideline C. Applicant, a dual citizen of the U.S. and Syria, exercised dual citizenship when he obtained approval from the Syrian government to travel to Syria in 1994, 1996, 1998, 2000, and 2003. By doing so, Applicant held himself out as a Syrian citizen and complied with Syrian law by obtaining an exemption from compulsory military service when he was present in Syria. These are affirmative actions by Applicant that raise a security concern under DC 1⁽¹²⁾ and DC 4.⁽¹³⁾

Although a security concern is raised, Applicant's actions are rather minor compared with other actions that may indicate a preference for a foreign country (e.g., possessing and using a foreign passport, voting in foreign elections, etc.). And when evaluating his exercise of dual citizenship, it's important to consider Applicant's motivation.⁽¹⁴⁾ His motive was to eliminate or reduce the risk that he would be forced into compulsory military service upon his return to Syria to visit his mother. Indeed, checking with the Syrian Embassy before traveling is consistent with the State Department's guidance. Accordingly, Applicant's motive of self preservation puts his exercise of dual citizenship in context.

Turning to the mitigating conditions under Guideline C, two of the four apply. First, MC 1⁽¹⁵⁾ applies because Applicant's dual citizenship is based on his birth in Syria. Second, MC 4⁽¹⁶⁾ applies because Applicant has expressed a

clear and unequivocal willingness to renounce his Syrian citizenship. Indeed, since obtaining U.S. citizenship in 1988, Applicant has merely maintained (not exercised) his dual citizenship except for obtaining the travel approval on five occasions. Otherwise, Applicant is a fully assimilated naturalized American citizen. He is married to a native-born U.S. citizen, has two native-born U.S. citizen children, and he possesses and uses a U.S. passport. Since 1979, he's lived his life--as a student, a highly-skilled engineer, and a husband and father--in the U.S. and that situation is unlikely to change. Finally, his long-time employment with the Army speaks volumes about his preference. Accordingly, given the totality of facts and circumstances, Applicant has mitigated the foreign preference security concern based on his clear preference for the U.S.

2. Foreign Influence Guideline

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. 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 addition, common sense suggests 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. Concerning family ties, the language of Guideline B does not require a conclusion that an unacceptable security concern exists based solely on an applicant's family ties in a foreign country. (17) An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern or risk under Guideline B. (18) Finally, given that the U.S. considers Syria to be a state sponsor of terrorism, Applicant bears a "heavy burden" of showing that the presence of his family members living in Syria do not pose a security concern. (19)

Here, based on the record as a whole, the government has established a *prima facie* case under Guideline B. In particular, DC 1 (20) applies given Applicant's family members are citizens of Syria and are residents (except one sister) in Syria. (21) The strength of those ties is evidenced by, among other things, Applicant's travel to Syria to visit his mother and siblings. His family ties raise a security concern due to the potential for foreign influence. (22) In addition, given the authoritarian nature of Syria's government, Applicant's travel to Syria is conduct that could make him vulnerable to coercion, exploitation, or pressure. Accordingly, DC 6 (23) applies. The remaining disqualifying conditions under Guideline B do not apply given the record evidence.

In mitigation, Applicant's mother and siblings are not employed by or connected with the Syrian military, law enforcement, or a governmental agency. Nor are they involved in political, scientific, commercial, or other activities where they might benefit from obtaining U.S. national security information. The mother and sister are retired, and his brothers work in rather ordinary jobs making it unlikely that they would come to the attention of Syrian authorities interested in obtaining U.S. classified information. In short, Applicant's mother and siblings are not agents of a foreign power, and so, MC 1 (24) applies in Applicant's favor. (25) The remaining mitigating conditions of Guideline B do not apply given the record evidence.

The analysis does not necessarily end with the formal mitigating conditions as other facts and circumstances may mitigate the security concern. First, since Applicant was granted a clearance by the Army in 1990, not much has changed (for example, Syria has been designated a state sponsor of terrorism since 1979). (26) Other than Applicant's travel to Syria starting in 1994, the essential facts--his family ties--are unchanged. What has changed is Applicant's commitment to the U.S., which has grown stronger over the years and is, in my view, high. Applicant's high-level of commitment to the U.S. is a relevant and material fact that weighs in his favor.

Second, Applicant's ties or connections to the U.S. are substantial. Since his arrival here, he can fairly be described as a model immigrant. He obtained a good education in a profession, possessed and used a U.S. passport, and worked for more than a decade--while holding a security clearance--as a civilian employee for the Army. His federal employment

with the Army is notable for the recognition he received as well as the trust and confidence he inspired, resulting in, among other things, his selection to work for a defense agency engaged in high-level R&D. His wife and children (all native-born U.S. citizens), his professional career, and substantial financial interests (his salary, home, and investment accounts) are in the U.S., and these circumstances are unlikely to change. Moreover, Applicant has lived in the U.S. since 1979, nearly 25 years, which includes nearly all of his adult life. These are examples of ties that bind and these ties are firmly rooted in the U.S. These ties or connections to the U.S. are relevant and material facts that weigh in Applicant's favor.

Lacking a crystal ball, it's impossible to predict the future. Nevertheless, based on the record evidence as a whole, it is my predictive judgment that Applicant has the necessary strength of character to resist and report any potential foreign influence or pressure by either coercive or non-coercive means. My judgment is influenced by Applicant's service as a reliable and trustworthy civilian employee and clearance holder for the Army. After weighing the record evidence as a whole, it is my commonsense determination that the facts and circumstances show that Applicant's connections to Syria do not pose an unacceptable security concern or risk of foreign influence. Accordingly, given the totality of facts and circumstances, Applicant has mitigated the foreign influence security concern and satisfied his "heavy burden."

In reaching my decision, I have considered the evidence as a whole, both favorable and unfavorable, as well as the whole-person concept and other appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

SOR ¶ 1-Guideline B: For the Applicant

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

SOR ¶ 2-Guideline C: For the Applicant

Subparagraph 2.a: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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. *See* ISCR Case No. 98-0320 (April 8, 1999) at pp. 3-4.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

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

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

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

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

11. *See* ISCR Case No. 97-0356 (April 21, 1998) at p. 4.

12. "The exercise of dual citizenship."

13. "Accepting education, medical, or other benefits, such as retirement and social welfare, from a foreign country."

14. It's proper to consider the motivation of the applicant under ¶ 6.3.4 and ¶ E.2.2.1.7 of the Directive.

15. "Dual citizenship is based solely on parents' citizenship or birth in a foreign country." *See* ISCR Case No. 99-0452 (March 21, 2000) at pp. 2-3 (Modifying its earlier rulings, the Appeal Board concluded the literal language of MC 1 allows it to be applied even when an applicant exercises their foreign citizenship after becoming a U.S. citizen).

16. "Individual has expressed a willingness to renounce dual citizenship."

17. ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

18. *Id.*

19. *See* ISCR Case No. 02-04786 (June 27, 2003).

20. "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. *See* ISCR Case No. 98-0507 (May 17, 1999) at pp. 10-11 (discussing various facets of security significance of family ties in a foreign country).

22. *See* ISCR Case No. 99-0511 (December 19, 2000) at pp. 10-11 (foreign influence issues are not limited to situations involving coercive means of influence; rather, they can include situations where an applicant may be vulnerable to non-coercive means of influence).

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

24. "A determination that the immediate family member(s), (spouse, father, 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."

25. Applying MC 1 requires a judge to determine that an applicant's immediate family members, cohabitants, or associates are not: (1) agents of a foreign power; or (2) in a position to be exploited. The bifurcated nature of MC 1 means it may be applied if an applicant satisfies either one of the two parts. The use of the conjunction "or" in the phrase "agents of a foreign power or in a position to be exploited . . ." supports this plain meaning reading. If the phrase used the conjunction "and" instead of "or" an applicant would have to satisfy both parts. In other words, it is simply unreasonable to read "or" for "and." Of course, an applicant who can satisfy both parts may very well present less of a security concern than an applicant who satisfies one part, but it depends on the totality of facts and circumstances presented by the record.

26. Of course, I have not forgotten that 9/11 has, in many respects, changed everything in this age of terrorism.

