

DATE: September 5, 2003

In re:

SSN: -----

Applicant for Security Assurance

ISCR Case No. 02-26689

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Fifty-five-year-old Applicant for security assurance is married to a woman of Syrian citizenship. Her parents, sisters, and brothers are citizens of Syria. Some live in Syria, other in Saudi Arabia. Applicant failed to demonstrate sufficient mitigation of foreign influence security concerns. Assurance is denied.

STATEMENT OF THE CASE

Applicant is an employee of a defense contractor in partnership with the Government of Saudi Arabia. U.S. citizens who require access to classified information outside the U.S. are processed for security assurance under Department of Defense Directive 5220.6 as if they were applying for a security clearance. Ex. 4. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue security assurance for Applicant. In an undated letter, DOHA issued a Statement of Reasons (SOR) under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ detailing the basis for its decision-Applicant failed to meet the foreign influence (Guideline B) personnel security guideline of the Directive. Applicant answered the SOR in writing on 24 May 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 23 June 2003. On 29 July 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicants security assurance. DOHA received the transcript (Tr.) of the proceeding on 6 August 2003.

FINDINGS OF FACT

Applicant is a 55-year-old maintenance engineer who works for a defense contractor in partnership with the Government of Saudi Arabia. Ex. 1 at 1, ; Tr. 16, 53. In 1997, he married a Syrian citizen who was living and working in Saudi Arabia. Answer; Tr. 18. They have a daughter who is a U.S. citizen by birth. Tr. 23. The family lived in Saudi Arabia, but Applicant's wife and child have returned to the U.S. Applicant's wife has a green card and is subject to travel restrictions due to her status. Tr. 17, 28. Her parents and much of her extended family are Syrian citizens and residents. Tr. 8. She contacts them by telephone frequently.

One of Applicant's wife's sisters is a dentist in Saudi Arabia, is married, and has a daughter. This sister speaks English well and lives close to where Applicant and his wife lived in Saudi Arabia. Tr. 20. Her husband's sister is a Syrian living and working in Kuwait. Applicant's family and the dentist's family saw each other and dined together often. The dentist, her husband, and their daughter visited the U.S. and toured Disney World with Applicant and his family. Tr. 25. Applicant still sees them in Saudi Arabia, often.

Applicant's wife's younger sister is majoring in English at university in Syria. Tr. 21. Another sister is married to a Syrian doctor who practices in France. Tr. 21-22. A brother has a small computer shop in Syria. Applicant's wife's has several cousins who are residents and citizens of the U.S. Tr. 33.

Applicant has visited Syria on five or six occasions since 1997. His last trip was in February 2003 and lasted seven to eight days. Tr. 19. As Applicant does not speak much Arabic and his in-laws do not speak English, there is not much communication between them. Applicant does communicate with his wife's siblings who speak English.

Applicant has no assets in Saudi Arabia. Tr.35. His wife bought a share of an apartment house that was never finished. Appellant calculates its worth at about \$60,000. Answer; Tr. 33-34.

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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant's wife is a citizen of Syria (¶ 1.a.), his in-laws are citizens and residents of Syria with whom he has monthly contact (¶ 1.b.), a brother-in-law and sister-in-law are citizens of Syria but reside in Saudi Arabia, (¶ 1.c.), he traveled to Syria in February and July 1997 and January 1999 (¶ 1.d.), he has twice monthly telephone contact with his wife's cousin who is a citizen of Syria residing in Kuwait (¶ 1.e.), and his wife owns property

in Syria valued at approximately \$60,000 (¶ 1.f.). A security risk may exist when an individual's immediate family and other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S. or may be subject to duress. Directive ¶ E2.A2.1.1.

The Government established by its evidence and Applicant's admissions each of the allegations contained in the SOR with the exception of ¶ 1.e.⁽³⁾ Applicant's wife is a citizen of a foreign power-Syria. DC 1. Her parents and her siblings are Syrian citizens. Some of her siblings reside in Syria, others in Saudi Arabia and France. Because an applicant's wife is in a position to influence him, there is a rebuttable presumption Applicant has ties of affection for, or at least obligation to, his wife's immediate family. ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Applicant has more than casual and infrequent contact with members of his wife's immediate family. *See* MC 3. He sees his sister-in-law (the dentist) frequently and eats in her home on a weekly basis. He traveled with the dentist and her family for over a week to Disney World when they visited the U.S. His wife's father lived with Applicant and his wife while receiving medical treatment in the U.S. Applicant has ties of affection and obligation to his wife's family and his contacts with them are not casual and infrequent. DC 1 applies, MC 3 does not.

Applicant presented evidence that members of his wife's immediate family were not associated with the Syrian government from which one could infer they were not agents of a foreign power. A determination that the immediate family members or associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the family member or associate and loyalty to the U.S. is a mitigating condition under Guideline B. MC 1.

The inquiry in a foreign influence case is not limited to consideration of whether the foreign contacts or connections are agents of a foreign power. Rather, the foreign contacts or connections must also be evaluated in terms of whether they place an applicant in a *position of vulnerability* to be influenced by coercive or noncoercive means, even if there is no evidence that a foreign country has sought to exploit that vulnerability. ISCR Case No. 00-0628 at 5 (App. Bd. Feb. 24, 2003). Thus, we must also evaluate whether the country in which the foreign contacts live is hostile to and has interests inimical to those of the U.S.

Syria is hostile to, and has interests inimical to, those of the U.S. Syria is a totalitarian state that depends on the suppression of its people. After the U.S.-led invasion of Iraq on 19 March 2003, Syria became a leading critic of the U.S.-led campaign to oust Saddam Hussein from power in Iraq. Ex. at 6. Syria has been classified a "rogue state[]" that supports international terrorism and is pursuing the development of weapons of mass destruction." *Id.* at 8. While there is no evidence Applicant's contacts in Syria are foreign agents, their presence in that country, subject to the pressures of the hostile regime, places Applicant in a position of vulnerability that could force him to choose between loyalty to his wife and the persons involved and loyalty to the U.S. Therefore, MC 1 does not apply.

Under all the circumstances of this case, Applicant has not demonstrated that his foreign contacts do not place him in a position of vulnerability to foreign influence. Finding is against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.e.: Against Applicant

DECISION

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

James A. Young

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. There is no evidence Applicant's cousin resides in Kuwait. Instead, it appears ¶ 1.e. actually refers to the dentist's husband's sister.