

DATE: December 28, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24933

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-five year old Applicant (who immigrated to the U.S. in 1978)--a naturalized U.S. citizen working for a U.S. government contractor overseas--resides overseas with his wife (a Syrian-born citizen in the process of seeking U.S. citizenship) and three daughters (all of whom are U.S. citizens). He has family members who are naturalized U.S. citizens residing in the U.S. as well as family members who are Syrian citizens residing in Syria or Saudi Arabia. The foreign citizenship and residency status of those family members, none of whom are agents of a foreign government or in positions to be exploited by those foreign governments, does not constitute an unacceptable security risk. The government's security concerns have been mitigated by Applicant's strong preference for, and demonstrated loyalty and allegiance to, the United States, over Syria. Clearance is granted.

STATEMENT OF THE CASE

On August 9, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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 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, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated August 31, 2004, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on October 15, 2004, and a notice of hearing was issued that same date. The hearing was held before me on November 18, 2004. During the hearing, two Government exhibits, three Applicant exhibits, and the testimony of one Applicant witness (the Applicant), were received. The transcript (Tr.) was received on December 1, 2004.

RULINGS ON PROCEDURE

At the commencement of the hearing Department Counsel conceded Applicant had already mitigated the allegations of foreign preference under Guideline C (subparagraphs 1.a. and 1.b.)⁽¹⁾ and several allegations of foreign influence under Guideline B (subparagraphs 2.a., 2.d., 2.f. through 2.h., and 2.m.)⁽²⁾

At the commencement of the government case, Department Counsel requested Official Notice be taken of United States Department of State, Bureau of Consular Affairs, *Consular Information Sheet: Syria*, dated May 24, 2004. Pursuant to Rule 201, Federal Rules of Evidence (F.R.E.), I took Official Notice as requested, without any objection by Applicant.⁽³⁾

FINDINGS OF FACT

Applicant has admitted the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 1.a. and 1.b.), as well as the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 2.a. through 2.l.). Those admissions are incorporated herein as findings of fact. He did not address subparagraph 2.m., and that allegation will be considered denied.

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

Applicant is a 45-year-old employee of a defense contractor, and he is seeking to retain a security clearance, the level of which has not been specified. He was originally granted a CONFIDENTIAL security clearance in 1989. His most recent security clearance was an interim clearance, but it was recently withdrawn in connection with this review process.

Applicant was born in 1959 in what was then known as the United Arab Republic, and subsequently as the Syrian Arab Republic (Syria), a country included on the U.S. Department of State's list of State sponsors of terrorism,⁽⁴⁾ and whose interests may be inimical to the United States. Over the next 19 years, while residing with his family, including two sisters, he exercised the rights and privileges, and performed the responsibilities, of a citizen of Syria. In 1978, he moved to the United States.⁽⁵⁾ He received his B.S. degree in electrical engineering from a university in the United States in 1986.⁽⁶⁾ After residing in the United States for about 10 years, in March 1988, and upon completing the required immigration and naturalization citizenship process, Applicant became a naturalized citizen of the United States.⁽⁷⁾ At the time he took his oath of allegiance and was granted his new citizenship, Applicant renounced any allegiance to a foreign prince. Applicant does not consider himself to be a dual citizen of Syria,⁽⁸⁾ and holds himself out solely as a U.S. citizen.⁽⁹⁾

Applicant married his current wife--a Syrian-born permanent U.S. resident and applicant for U.S. citizenship⁽¹⁰⁾--in 1992,⁽¹¹⁾ and they currently reside in an allied middle eastern country where he works, with their three daughters.⁽¹²⁾ He was previously married for two years to a native-born U.S. citizen⁽¹³⁾ while attending college.

Applicant's father--formerly the owner of a factory, and now the owner of a restaurant in Syria⁽¹⁴⁾--is about 80-years old.⁽¹⁵⁾ His mother--a homemaker--is about 60-years old. Both parents are citizens and residents of Syria.⁽¹⁶⁾ Applicant's father never served in the Syrian military,⁽¹⁷⁾ and neither parent was ever active in Syrian politics.⁽¹⁸⁾ They do not receive government pensions.⁽¹⁹⁾ They have never been persecuted by the Syrian government.⁽²⁰⁾ Applicant calls them "maybe" once a month, and visits with them in Syria almost every year for 10 to 20 days.⁽²¹⁾ He also has three siblings. His brother is a Syrian-born naturalized U.S. citizen, residing in the U.S.,⁽²²⁾ where he is a physician.⁽²³⁾ He also has two sisters, both of whom were born and educated in Syria and remain Syrian citizens.⁽²⁴⁾ Both sisters are homemakers,⁽²⁵⁾ married to Syrian-born civil engineers⁽²⁶⁾ who work for companies in Saudi Arabia.⁽²⁷⁾ Neither brother-in-law is employed by the Syrian or Saudi Arabian governments.⁽²⁸⁾ If either sister happens to be visiting their parents at the same time Applicant is visiting them, Applicant will see his sisters and, possibly, his accompanying

brothers-in-law. (29) Applicant generally speaks with his sisters by telephone during the holidays up to three times per year. (30) Neither of his sisters or brothers-in-law, are involved politically in Saudi Arabia. (31) Likewise, they have never been persecuted by the Syrian or Saudi Arabian governments. (32) Applicant also has a Syrian-born uncle, aunt, and three cousins, all of whom are naturalized U.S. citizens, residing in the U.S. (33) His wife has three brothers. Two brothers are Syrian citizens: one is a dentist residing in Saudi Arabia, and the other is a businessman residing in Syria. (34) A third brother is a physician who is a naturalized Canadian citizen residing in Canada. (35)

Applicant has traveled to Syria sometimes by driving, to visit his parents. (36) On one occasion, in 1997, he traveled to Saudi Arabia to visit friends. (37)

Applicant was previously employed by a major U.S. government contractor in the U.S. from 1989 until 1993. (38) His work on a particular subcontract required that he travel overseas on two occasions. The 1990 Gulf war interrupted the contract. In 1993, Applicant was approached by a military service of the allied country where the contract services had been performed and offered Applicant a position working on the system previously installed. (39) He remained in that country and worked directly for its military component until 2000. (40) Applicant has been employed by a different U.S. government contractor, remaining in same allied country, since September 2000. (41) He is currently a senior administrator. Managers, co-workers, and even the assistant regional security officer at the U.S. Embassy where he works, all characterize him in glowing terms. They have referred to Applicant's dedication, professionalism, supportive nature, good character, honesty, trustworthiness, excellent work ethics, dependability, and loyalty.

As noted above, Syria is included on the U.S. Department of State's list of State sponsors of terrorism. A number of terrorist groups operating without major government interference within Syria--akin to a safe haven--oppose U.S. policies in the region, and there have been several terrorist incidents in which innocent persons have been killed. (42) While the U.S. and Syria have worked together in areas of mutual interest, Syria has been subject to legislatively mandated penalties, including export sanctions and ineligibility to receive most forms of U.S. aid or to purchase U.S. military equipment. In May 2004, President Bush signed an executive order implementing sanctions in accordance with the Syria Accountability Act. (43) Also, additional sanctions were imposed under the U.S. Patriot Act. (44)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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.

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 C - FOREIGN PREFERENCE]: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

[GUIDELINE B - FOREIGN INFLUENCE]: 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.

Conditions that could raise security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the "clearly consistent with the interests of national security" standard⁽⁴⁵⁾ or "clearly consistent with the national interest" standard. For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

CONCLUSIONS

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

The government has conceded its case under Guideline C. It had been alleged Applicant exhibited a preference for a foreign country--not Syria--but the U.S. allied country in which he resides and for which he had worked. His status in this regard arguably fell within Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.9. (*performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States*). However, in light of the evidence presented, as well as the concession by the government, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case under Guideline C. Accordingly, allegations 1.a. and 1.b. of the SOR are concluded in favor of Applicant.

The government has established its case under Guideline B. Applicant has been portrayed as a person who is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. This situation raises the potential for

vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. In support of its contentions, the government has cited the facts that Applicant's parents and two of his siblings are citizens of Syria and, in the case of the siblings and their respective spouses, residents of Saudi Arabia. It appears the government was also concerned regarding the citizenship and residency of two of Applicant's wife's brothers, although the evidence is far from clear. Those simple facts, standing alone, are sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B: [\(46\)](#)

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

None of Applicant's immediate family members are associated with the Syrian or Saudi Arabian governments or any intelligence services or organizations. These facts, when considered in light of the nature of the government in Syria--an authoritarian regime which seemingly supports and apparently provides safe haven for terrorist groups, and whose interests may be inimical to the United States--renders an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein more difficult.

The residence and citizenship of Applicant's immediate family members are clearly of security concern under Foreign Influence Disqualifying Condition (FI DC) 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*), but the significance of that ruling in this instance is mitigated by the "protection" afforded by Foreign Influence Mitigating Condition (FI MC) 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*). Applicant's contact with his family varies. It is clear his contacts with his parents are frequent and planned, thus negating the applicability of FI MC E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*), but the same cannot be said for his relationship with his sisters and, to a greater extent, his two brothers-in-law, all of whom would benefit from that provision. Furthermore, his contact with his wife's two brothers has not been demonstrated to be close or frequent, or with ties of affection. Likewise, Applicant's one trip to Saudi Arabia, in 1997--seven years ago--to visit friends, without more, does not appear to be of continuing security significance.

Applicant's interests in the U.S. are substantial. His uncle, aunt, three cousins, and his brother, are naturalized U.S. citizens, residing in the U.S. His three daughters, all between the ages of 11 and 7, are U.S. citizens by virtue of the location of their birth (one was born in the U.S.) or the nationality of their father at the time of their birth, and Applicant's wife is in the naturalization process of acquiring U.S. citizenship. They intend to remain overseas with his current employer until their daughters complete high school, and then return to the U.S. Their future is in the U.S. Applicant owns no property overseas and merely rents his current residence. His bank accounts are in the U.S. These facts come within FI MC E2.A2.1.3.5. (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*).

Based on the evidence, I conclude the security concerns manifested by the government, in this instance, are largely unfounded. Notwithstanding the nature of the government in Syria, I determine that Applicant's immediate family, considering their citizenship and residency status, do not constitute an unacceptable security risk. Their continuing personal relationship is viewed in positive terms, having no security significance. Thus, in light of the evidence presented, as well as the concession by the government, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case under Guideline B. Accordingly, allegations 2.a. through 2.m. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is suitable for access to classified information.

FORMAL FINDINGS

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1., Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Paragraph 2., Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Subparagraph 2.f.: For the Applicant

Subparagraph 2.g.: For the Applicant

Subparagraph 2.h.: For the Applicant

Subparagraph 2.i.: For the Applicant

Subparagraph 2.j.: For the Applicant

Subparagraph 2.k.: For the Applicant

Subparagraph 2.l.: For the Applicant

Subparagraph 2.m.: 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.

Robert Robinson Gales

Chief Administrative Judge

1. Tr., at 10.

2. Tr., at 11-13.

3. Tr., at 17-18.

4. U. S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet: Syria*, dated May 24, 2004, at 2.

5. Tr., at 24.

6. Government Exhibit 1 (Security Clearance Application (SF 86), dated June 15, 2001), at 2.
7. *Id.*, at 1.
8. *Id.*
9. *Id.*
10. Response to SOR, dated August 31, 2004, at 1. Applicant's wife applied for U.S. citizenship in April 2003. *Id.*
11. Government Exhibit 1, *supra* note 6, at 3.
12. Response to SOR, *supra* note 10, at 1.
13. Government Exhibit 1, *supra* note 6, at 3.
14. Tr., at 29.
15. Government Exhibit 1, *supra* note 6, at 3.
16. *Id.*
17. Tr., at 30.
18. Tr., at 30.
19. Tr., at 29.
20. Tr., at 30.
21. Tr., at 30.
22. Government Exhibit 1, *supra* note 6, at 4.
23. Tr., at 43-44.
24. Response to SOR, *supra* note 10, at 1.
25. Tr., at 31-33.
26. Tr., at 31, 33-35.
27. Tr., at 31, 33-34.
28. Tr., at 41.
29. Tr., at 32-35.
30. Tr., at 32-33.
31. Tr., at 33, 35, 41.
32. Tr., at 33, 35.
33. Tr., at 44-45.

34. Government Exhibit 2 (Answers to Interrogatory, dated June 8, 2004), at 8.

35. *Id.*

36. Response to SOR, *supra* note 10, at 2.

37. *Id.*

38. Government Exhibit 1, *supra* note 6, at 2.

39. Government Exhibit 2, *supra* note 34, at 3.

40. Government Exhibit 1, *supra* note 6, at 2.

41. *Id.*

42. *Consular Information Sheet: Syria*, *supra* note 4, at 2.

43. *Id.*, at 6.

44. *Id.*

45. Exec. Or. 12968, *Access to Classified Information*; as implemented by Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (Sec. B.3.; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (Enclosure 2 (Change 3), *Adjudicative Guidelines*, at 2-2).

46. ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.