

KEYWORD: Foreign Influence, Foreign preference, Personal Conduct

DIGEST: Applicant is a 37-year-old female who works as a research assistant for a defense contractor. She took pleasure trips to Syria in 1997 and 1999, but did not list that travel on her security clearance application. While in Syria in 1997, she used her Syrian passport, rather than her U.S. passport, to enter and exit that country. While there, she visited her father and brother, citizens and residents of Syria. Applicant falsified material facts on her security clearance application when she failed to disclose that she possessed a Syrian passport. Applicant has not mitigated the security concerns pertaining to foreign preference, foreign influence, and personal conduct. Clearance is denied

CASE NO: 03-09077

DATE: 06/23/2006

DATE: June 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No.03-09077

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Elizabeth L. Newman, Esq.

SYNOPSIS

Applicant is a 37-year-old female who works as a research assistant for a defense contractor. She took pleasure trips to Syria in 1997 and 1999, but did not list that travel on her security clearance application. While in Syria in 1997, she used her Syrian passport, rather than her U.S. passport, to enter and exit that country. While there, she visited her father and brother, citizens and residents of Syria. Applicant falsified material facts on her security clearance application when she failed to disclose that she possessed a Syrian passport. Applicant has not mitigated the security concerns pertaining to foreign preference, foreign influence, and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On November 14, 2002, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).⁽¹⁾ On August 26, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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. The SOR detailed reasons under Guideline C (Foreign Preference), Guideline B (Foreign Influence), and Guideline E (Personal Conduct) 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. DOHA recommended referral of the case to an Administrative Judge to determine whether a clearance should be granted or revoked.

On September 13, 2004, in a sworn, notarized statement, Applicant responded to the SOR and requested that the case be decided on the written submissions without a hearing. Department Counsel then filed its file of Relevant material (FORM)⁽²⁾ on December 3, 2004. Subsequently, Applicant retained legal counsel who, on January 24, 2005, requested an in-person hearing. Consequently, the case was assigned to me on April 27, 2005.

A Notice of Hearing was issued on July 20, 2005. Applicant's counsel then requested a continuance for good cause shown, which was granted. On July 21, 2005, an Amended Notice of Hearing was issued, scheduling the hearing for August 1, 2005. At the hearing, the government's six exhibits and Applicant's five exhibits were accepted into the record.⁽³⁾ At Applicant's request, the record was held open through August 8, 2005, to enable her to submit supplemental documents. Applicant timely submitted two additional documents, which were received.⁽⁴⁾ On August 17, 2005, DOHA received the hearing transcript (Tr.).

FINDINGS OF FACT

Applicant admitted all of the allegations pertaining to foreign preference under Guideline C (subparagraph 1.a.) and foreign influence under Guideline B (subparagraphs 2.a. through 2.d.). Those admissions are incorporated herein as findings of fact. She denied the allegations pertaining to personal conduct under Guideline E (subparagraphs 3.a. through 3.d.). After a complete and thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 37-year-old female, born in Damascus, Syria.⁽⁵⁾ She is currently employed as a research assistant for a defense contractor. She earned an associate's degree in computer science in 1991 from a Cyprian university affiliated with a university in the U.S.⁽⁶⁾ In 1993, she immigrated to the U.S. from Cyprus.⁽⁷⁾ She became a naturalized U.S. citizen on June 13, 1995. In December 1998, Applicant married a Canadian citizen living in the U.S. They have one child born in the U.S. The couple subsequently separated in November 2002.

As a child, Applicant's parents divorced. Her mother is a citizen of Syria and a naturalized U.S. citizen, but currently resides in Cyprus with her American-born husband. She is a retired accountant for an offshore oil company. Her husband is a retired general manager of an offshore oil company.⁽⁸⁾

Applicant's father is 72 years old, and her brother⁽⁹⁾ is 38 years old. They are both citizens and residents of Syria. Her father is retired and her brother is a jeweler. She has limited contact with them because her biological father did not raise her. She talks to her brother at least once or twice a year by telephone. The last time she saw either one was in 1999, when she visited Syria.⁽¹⁰⁾ She has not given her father or brother her address or telephone number in the U.S. Applicant's married sister lives in the U.S., and they maintain regular contact.

Applicant has traveled extensively. She traveled to Cyprus in 1992, 1994, 1997. She visited Syria in 1997. In 1998, she visited Spain. In 1999, she went to Cyprus and Syria. Moreover, she was in Cyprus from May to August 2002.

Applicant's Syrian passport expired in 1998.⁽¹¹⁾ In a letter dated August 2, 2005, to the Embassy of Syria, she revoked her Syrian citizenship and enclosed her expired Syrian passport, which she contends was torn in half.

On November 12, 2004, she completed the Counterintelligence and Security Screening Questionnaire for Contract Linguists. Question 11 requested information about *(Foreign Travel/Connections - Indicate if any of the following apply to you or one or more of your close relatives or associates in the past 7 years: (12) a. Traveled outside the U.S. (except as a dependent or member of the U.S. Armed Forces or the U.S. government).* Applicant listed travel to Spain in 1998 and to Cyprus in 1999 and 2002, but she failed to list travel to Syria in 1997 and 1999. Moreover, on her 1997 trip, she used her Syrian passport because:

When I used the Syrian passport at that time, it was -- I thought it would be easier for the Customs, just for things to be easier, and that's the only reason I used it at that time.

Applicant completed a Security Clearance Application (SF 86) on November 14, 2002. (13) She responded to Question 16 *(Foreign Countries You Have Visited Have you traveled outside the United States on other than official U.S. Government orders in the last 7 years? (Travel as a dependent or contractor must be listed.) Do not repeat travel covered in modules 4, 5, and 6)* by only listing travel to Spain in 1998 and Cyprus in 2002. She failed, however, to list travel to Syria in 1997 and 1999 to visit family and/or relatives. Moreover, she traveled to Cyprus numerous times, including 1992, 1994, 1997, 1999, and May to August 2002 to visit family and relatives. She did not disclose travel to Cyprus in 1997, but did list her 1999 and 2002 trips.

Prior to her current job, Applicant worked as an Arabic linguist for another defense contractor. She was a translator for 16 months in Guantanamo, Cuba. (14) Applicant excelled at this job and received accolades from a former coworker, who stated that he had "the highest confidence and trust" in Applicant. He recommended that a security clearance be granted. (15) Moreover, other professional colleagues have attested to her professionalism and character. (16)

Of concern, under the SOR, is Applicant's travel to Syria. Syria, also known as the Syrian Arab Republic, is a Middle Eastern country that has a developing, mixed-sector economy. (17) U.S.-Syrian relations have a history of difficulty and the U.S. continues to have serious differences with Syria. (18) Syria did, however, cooperate with the U.S. as a member of the multinational coalition of forces in the first Persian Gulf War. (19) Syria has been on the U.S. list of state sponsors of terrorism since the list's inception in 1979. (20) Syria continues to provide safe haven and support to terrorist groups. (21) Syria is ruled by an authoritarian regime that exhibits the forms of a democratic system, but its President has almost absolute authority. (22)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial

commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²³⁾ The government has the burden of proving controverted facts.⁽²⁴⁾ The burden of proof is something less than a preponderance of evidence.⁽²⁵⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

her.⁽²⁶⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁷⁾

A memorandum⁽²⁸⁾ clarified the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The Guideline requires that clearance need not be denied or revoked if the applicant surrenders the foreign passport. The memorandum requires that a clearance be denied or revoked unless the Applicant surrenders the foreign passport or receives the official approval of the United States Government for the possession or use.

No one has a right to a security clearance⁽²⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽³⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽³¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽³²⁾ 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.

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

Guideline C (Foreign Preference): *The Concern:* 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. 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 or birth. (33)

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.

Guideline E (Personal Conduct): *The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a case for disqualification under Guideline C (Foreign Preference), Guideline B (Foreign Influence), and Guideline E (Personal Conduct).

Foreign Preference

Based on the record as a whole, the Government has established its case under Guideline C. In 1997, Applicant used her U.S. passport for a trip, which included a visit to Syria. Applicant used her Syrian passport instead of her U.S. passport to enter and exit Syria in 1997. She did not use her Syrian passport for any other portion of her trip. However, in doing so, Applicant held herself out as a Syrian citizen by using her Syrian passport. However, when she entered Syria without using her U.S. passport, her travel could not be verified by the U.S., and her whereabouts were only known to her and

the government of Syria. The security concern underlying Guideline C is that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount. Since Applicant had her U.S. passport with her, which she used on other segments of her trip, this affirmative action by Applicant, using her Syrian passport in Syria, raises a security concern under Foreign Preference Disqualifying Condition E2.A3.1.2.2 (*possession and/or use of a foreign passport*). None of the Foreign Preference Mitigating Conditions exists here.

Moreover, Applicant did not surrender her passport, which expired in 1998, until 2005. Because Applicant used her Syrian passport while in Syria in 1997, she failed to demonstrate suitability for access to classified information, which is predicated upon trust and confidence. Surrendering her Syrian passport in 2005 was a gesture made too late, since she could have used her U.S. passport in 1997 when she entered and exited Syria.

Even though Applicant appears to be a fully assimilated naturalized American, who has graduated from an American university, has married in the U.S., has a child born in the U.S., possesses and uses a U.S. passport, and has expressed a clear willingness to renounce her Syrian citizenship, she did not show allegiance to the U.S. when she used her Syrian passport. Significantly, the facts do not support Applicant's contention that it was a coincidence that she has not listed any travel to Syria on either her SF 86 or Screening Form. Applicant has failed to mitigate or overcome the government's case pertaining to foreign preference. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegation 1.a. of the SOR is concluded against Applicant.

Foreign Influence

Under Guideline B (Foreign Influence), a security concern may exist when an individual's immediate family members 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.

Based on the record as a whole, the government has established its case under Guideline B. Applicant's father and brother are citizens and residents of Syria. Her brother is a jeweler, but Applicant failed to describe her father so as to permit an assessment of his relationship with the Syrian government. Applicant says she does not have strong bonds of affection toward either her father or brother, but she tries to see them whenever she visits. Despite her denial of strong family ties to her brother and father, she visited them without reporting her travels to the U.S. government. Given the authoritarian nature of Syria's government, Applicant's travel to Syria could make her and her family vulnerable to coercion, exploitation, or pressure.

Applicant's mother is a dual naturalized citizen of the U.S. and Syria, lives in Cyprus, and visits Syria occasionally. The

mother is not employed by or connected with the Syrian military, law enforcement, or a governmental agency. She is not involved with political, scientific, or commercial organizations or activities which might benefit from obtaining U.S. national security information. Accordingly, I conclude she is not an agent of a foreign power. Applicant traveled to Cyprus numerous times, including 1992, 1994, 1997, 1999, and May to August 2002, to visit family and relatives, including her mother. Based on the evidence of record, it is plausible that the government of Syria, when the mother is in Syria, could put pressure on the mother, a Syrian citizen, to pressure Applicant, who visits her often. This could result in the compromise of classified information. Accordingly, Foreign Influence Disqualifying Condition (FI DC) E2.1.2.1 (*an immediate family member, or a person who whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*) and FI DC E2.A2.1.2.6 (*conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government*) applies. None of the Foreign Influence Mitigating Conditions (FI MC) apply. Applicant has established that the relatives (mother and brother) are not agents of a foreign power but that they are in a position to be exploited by Syria in a way that could force Applicant to choose between loyalty to her family or loyalty to the United States. Accordingly, 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*) does not apply. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 2.a through 2.d. of the SOR are concluded against Applicant.

Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justified confidence the person can be trusted to properly safeguard classified information.

Based on the record evidence as a whole, the Government has established its case under Guideline E. Applicant falsified material facts in Questions 16 and 11 by deliberately omitting her travel to Syria in 1997 and 1999. Thus, Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), and PC DC E2.A5.1.2.4 (*personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*) apply. None of the Personal Conduct Mitigating Conditions apply here. Under the circumstances, Applicant has failed to mitigate or overcome the Government's case. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 3.b. and 3.c. of the SOR are concluded against Applicant. In the FORM, Department Counsel conceded that allegations 3.a. and 3.d. were mitigated. [\(34\)](#)

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant is an educated, worldly woman who is aware of international tensions, concerns regarding security, and the conduct of business by defense contractors. I am persuaded by the totality of the evidence in this case that it is clearly not consistent with the national interest to grant Applicant a security clearance.

For the reasons stated, I conclude Applicant is not 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline C (Foreign Preference): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Paragraph 2. Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Paragraph 3. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

Subparagraph 3.d: For Applicant

DECISION

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

Jacqueline T. Williams

Administrative Judge

1. Government Ex. 1 (Security Clearance Application, dated November 30, 1998).

2. Ex. B (Under the heading "III. Procedure" ¶ 2 states "Applicant has mitigated subparagraphs 3(a) and 3(d)."

Moreover, footnote 3 appears at the end of that statement and indicates: "Although Applicant did not list her Syrian brother on her SF 86 in December 2002, she listed him in response to question seven on the Counterintelligence and security screening questionnaire for contract linguists, that she completed in November 2002."

3. Department Counsel objected to Applicant's inclusion of the FORM as Applicant's exhibit (Ex.) B, but the motion was overruled.

4. Ex. F (Letter, dated October 9, 2001, 2 pages); Ex. G (Certificate of Release of Federal Tax Lien, dated March 17, 2004, 1 page).

5. Tr. 46. Applicant's name is spelled two different ways. Sometimes she uses "Diwaneh." Her passport has her last name listed as "Diwangh." She said her name is misspelled on her passport, and when she applied for a job that needed identification, she showed them the passport and usually uses the passport name "Diwangh."

6. Tr. 24. Her degree states that she graduated from a university in the U.S.

7. Tr. 25.

8. Tr. 24-25; Ex. C (U.S. Naval Criminal Investigative Service, dated February 21, 2003).

9. On November 12, 2002, Applicant completed a Counterintelligence and Security Screening Questionnaire for

Contract Linguists. She indicated that her brother resided in Syria. However, when she completed the SF 86, she did not indicate that she had a brother. This was previously mitigated in the FORM.

10. Tr. 28.

11. Ex. G (Letter to Embassy of Syria, dated August 2, 2005).

12. Emphasis in original.

13. Applicant denies that she falsified material facts on the SF 86, when she responded "no" to Question 15 (*Your Foreign Activities - Passport In the last seven years, have you had an active passport that was issued by a foreign government?*). She possessed a Syrian passport issued June 20, 1992, with an expiration date of June 19, 1998. This was previously found mitigated in the FORM.

14. Tr. 37.

15. Ex. A (Verified Statement, dated July 29, 2005).

16. Ex. E (Seven character reference letters).

17. Government Ex. 5 (U.S. Department of State, Background Note: Syria, dated August 2004).

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*; Government Ex. 6 (U.S. Department of State, Syria, dated February 28, 2005).

22. Government Ex. 5, note 16, *supra*.

23. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

24. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.

25. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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

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

28. *See* Money Memorandum, Clarifying the Application of the Foreign Preference Adjudicative Guideline, dated August 16, 2000.

29. *Egan*, 484 U.S. at 531.

30. *Id.*

31. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

32. Executive Order 10865 § 7.

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

34. *See* Ex. B, note 2, *supra*.

