

KEYWORD: Foreign Influence; Personal Conduct; Financial

DIGEST: Applicant has severely delinquent credit card debt he failed to disclose in a security clearance application he submitted. He has numerous relatives who are citizens and residents of Saudi Arabia and Romania who create a potential foreign influence security concern. Clearance is denied.

CASENO: 04-05808.h1

DATE: 03/28/2006

DATE: March 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05808

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has severely delinquent credit card debt he failed to disclose in a security clearance application he submitted. He has numerous relatives who are citizens and residents of Saudi Arabia and Romania who create a potential foreign influence security concern. Clearance is denied.

### **STATEMENT OF THE CASE**

On May 19, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F (financial considerations), Guideline E (personal conduct), and Guideline B (foreign influence). Applicant submitted a response to the SOR that was received by DOHA on July 29, 2005, admitted all Guideline F and Guideline E allegations, denied all Guideline B allegations, and requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on August 26, 2005, that was mailed to Applicant on August 31, 2005. Applicant acknowledged receipt of the FORM on October 24, 2005, and did not object to anything contained in the FORM or submit additional information for consideration within the 30-day time period provided to him. The case was assigned to another administrative judge on November 30, 2005, and reassigned to me February 10, 2006, due to caseload considerations.

### **FINDINGS OF FACT**

Applicant's partial admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 51 years old, has been married since February 1995, and has one ten-year-old daughter. He was born in Saudi Arabia, and first came to the United States in 1976 to study music. He returned to Saudi Arabia in approximately 1980, worked there as a translator from 1982 until 1986, and then returned to the United States to attend college. Applicant obtained a bachelor of arts degree from a U.S. university in August 1989. Applicant was employed as a translator/medical interpreter at a university hospital cancer center from July 1991 until August 2002. He has apparently been a self-employed linguist since August 2002, and on occasion provides translation services on behalf of the Department of Defense and a government contractor.

Following his return to the U.S. in 1986, Applicant converted to Christianity. He feared possible execution because of his conversion if he returned to Saudi Arabia, and thus applied for and was granted asylum in the United States. He became a naturalized U.S. citizen on February 9, 2001. Applicant's wife, who was born in Romania, became a naturalized U.S. citizen in June 2002.

Applicant's mother is a 68-year-old citizen and resident of Saudi Arabia. She has never been employed outside the home. Applicant has three brothers who are citizens and residents of Saudi Arabia, and who were born in 1957, 1963 and 1971. (2) Applicant's oldest brother graduated from a U.S. university and is employed as a geophysicist by a Saudi Arabian government-owned company. Applicant's second brother is a married high school teacher with children. Applicant's youngest brother is married to a dentist, has one child, and resides with Applicant's mother. Applicant has two sisters who are citizens and residents of Saudi Arabia. His oldest sister was born in 1959, is married with children, and at one time worked as a physics teacher. Applicant's other sister was born in 1961, is married with children, and working on a Ph.D.

Applicant has not had personal contact with his older sister since 1987, and his younger sister since either 1999 or 2000. He has not seen his middle brother since 1987. Applicant's youngest brother's wife attended an orthodontist school in the United States in approximately 2003, and Applicant visited with this brother in the U.S. while his wife was studying here. Applicant's primary contact with his relatives in Saudi Arabia is through approximately weekly e-mail exchanges with his oldest and youngest brothers. Applicant's siblings have provided him financial support on occasion, including when he left his hospital job in 2002, and when his youngest brother was visiting in the U.S. in 2003, in amounts ranging from a few hundred dollars to \$2,000.00.

Applicant's parents-in-law are retired citizens and residents of Romania. His father-in-law worked as a pastor and his mother-in-law as a nurse. Applicant sponsored his in-laws to come to the U.S. to attend his wedding in 1995. They now are able to enter the U.S. without his assistance, and last visited him and his wife in November 2002.

The SOR alleges three credit card debts, totaling \$20,715.00, that were charged off as bad debts between September 2000 and October 2002. A fourth credit card debt was submitted for collection in April 2004, in the amount of \$15,960.00. The debt listed in SOR subparagraph 1.a is listed in Applicant's credit report, dated August 25, 2005, (3) as a charged off account having a past due amount owing of \$668.00. The debt listed in SOR subparagraph 1.b is listed in that credit report as *account transferred or sold* with no further information on the status of the account discernable from the contents of the credit report. The debt listed in SOR subparagraph 1.c is listed in the credit report as a collection account owing to a different named creditor with a balance

(4)

owing in the amount of \$4,716.00. The debt listed in SOR subparagraph 1.d is listed in the credit report as a collection account with a balance owing in the amount of \$17,188.00.

Applicant provided a statement to a Special Agent (SA) from the Defense Security Service (DSS) on March 11, 2004. In that statement he acknowledged his liability for each of the delinquent debts listed in the SOR and indicated he intended to take aggressive action to satisfy his past due debts. He explained he incurred the delinquent credit card debts by spending money foolishly shortly after he got married without giving thought to the possible consequences. He admitted he lacked financial discipline and control at the time and considered himself to have been financially irresponsible.

Applicant provided another statement to a SA from the DSS on November 22, 2004. He again acknowledged his liability for the debts listed in the SOR, and indicated he would contact each of those creditors by the end of that month, inquire about payment options, and that he intended to pay them in full. He also stated he had made payments toward the amount owing to the creditor listed in SOR subparagraph 1.a, which is corroborated by a comparison of the amount alleged in that subparagraph with the balance shown as owing in the August 25, 2005 credit report.

Applicant submitted a security clearance application (SF 86) on September 16, 2003, in which he answered "No" to questions asking if he was currently more than 90 days delinquent on any debts or if he had been more than 180 days delinquent on any debts in the preceding seven years. In the statement he provided on March 11, 2004, Applicant explained he did not list the debts alleged in the SOR because he didn't have a credit report with the account information and, not wanting to provide false information, decided to not list anything at all. In his response to the SOR, Applicant wrote that he included a statement in the SF 86 to the effect that he didn't have detailed information about his financial delinquencies for the past seven years but that information should be contained in his credit report. Although the SF 86 contains a statement about traffic tickets made by Applicant in the space provided for general remarks, it does not contain any statement pertaining to Applicant's finances.

### **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon 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 evidence as a whole, Guideline F, pertaining to financial considerations, Guideline E, pertaining to personal conduct, and Guideline B, pertaining to foreign influence, with their respective DC and MC, are most relevant in this case.

### **BURDEN OF PROOF**

The sole 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.<sup>(5)</sup> The government has the burden of proving controverted facts.<sup>(6)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(7)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(8)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(9)</sup> 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 him.<sup>(10)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(11)</sup>

No one has a right to a security clearance<sup>(12)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(13)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(14)</sup>

### CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant accumulated excessive credit card debt, totaling more than \$36,000.00, that has been either submitted for collection or charged off as bad debts. Although he has made some payment on one of the debts, there is no indication he has done anything to resolve the others. His recent credit report discloses three of the four alleged debts are still in a delinquent status with a total balance owing of more than \$22,500.00, and the fourth has been transferred or sold to another creditor with the total amount now owing not being listed. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations* and DC 3: *Inability or unwillingness to satisfy debts* apply.

Applicant on two occasions in 2004 acknowledged his liability for the delinquent accounts listed in the SOR, and on each of those occasions asserted he was going to pay them off. While he has made some effort to satisfy one of the debts, there is no evidence he has done anything to resolve the others. The one debt he apparently has made some payments on was still listed in his August 25, 2005 credit report as a charged off account with a balance owing. I have considered all mitigating conditions under Guideline F, and none apply. Accordingly, Guideline F is decided against Applicant.

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

Applicant provided incorrect answers to two questions inquiring about any delinquent debts he might have in the SF 86 he submitted. In the

statement he provided in March 2004, he attributed the incorrect answers to his decision to not list any debts because he didn't have a credit report and didn't want to risk providing false information. In his answer to the SOR, Applicant claimed he indicated in the SF 86 that information about his delinquent debt should be contained in his credit report. Although the SF 86 did contain extraneous information in the general remarks section, it did not contain any information about delinquent debt. Considering their contradictory content and inherent improbability, neither of Applicant's explanations is credible.

DC 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* applies. I have considered all mitigating conditions under Guideline E, and none apply. Accordingly, Guideline E is decided against Applicant.

Under Guideline B, 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.

Based on the allegations in the SOR, DC 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;* and DC 2: *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists* must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B.

Applicant maintains regular contact with two of his brothers in Saudi Arabia and frequently inquires about his mother in his e-mail exchanges with them. Applicant's joyous depiction of his relatives living in Saudi Arabia in his answer to the SOR clearly demonstrates his continuing love and affection for all of them. Their willingness to provide financial assistance to him on several occasions indicates the feelings of affection are reciprocal. DC 1 applies in this case based on Applicant's mother and five siblings being citizens and residents of Saudi Arabia and his continuing ties of affection and/or obligation to them.

Applicant's parents-in-law are citizens and residents of Romania. Applicant has sponsored them to come to the United States to visit, and they have now obtained some sort of status that allows them to travel to this country on their own. Their most recent visit with Applicant and his wife occurred in November 2002. Although the record does not disclose the extent of Applicant's and his wife's contact with her parents, he did indicate in his March 2004 statement that she had more contact with her parents than his infrequent contact with them. DC 2 applies in this case based upon Applicant's parents-in-law status as citizens and residents of Romania and his presumptively close ties of affection and/or obligation to them through his wife.

Once the government meets its burden of proving controverted facts<sup>(15)</sup> the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.<sup>(16)</sup> Further, the government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating conditions, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>(17)</sup>

Saudi Arabia has been the site of significant terrorist activity directed against U. S. citizens and interests. The U.S. Department of State has warned U.S. citizens to defer nonessential travel to Saudi Arabia due to concerns about the possibility of additional terrorist activity directed against American interests.<sup>(18)</sup> There have been a number of anti-Western attacks in Saudi Arabia since May 2003. Terrorists have targeted housing compounds, businesses, and Saudi government facilities with vehicle-borne explosives and automatic weapons, causing significant civilian deaths and serious injuries, and in separate incidents have held hostages and killed individual Westerners, including American citizens.<sup>(19)</sup>

Romania is a constitutional democracy and a developing country in transition from a centrally planned to a market economy. The Government generally respects the human rights of its citizens, although there are problems in some areas, most notably through alleged police abuse of prisoners and Roma (gypsies). Societal harassment of religious and sexual minorities, violence and discrimination against women, and restitution of property confiscated during the Communist regime remain problems.<sup>(20)</sup>

Considering the terrorist threat within Saudi Arabia that is directed against United States interests,<sup>(21)</sup> and Applicant's close and continuing contacts with at least some of his immediate family members residing in that country, MC 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, 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;* and MC 3: *Contact and correspondence with foreign citizens are casual and infrequent* are inapplicable to the facts of this case as applied to Applicant's Saudi Arabian relatives.

Similarly, Applicant presumptively has vicariously close ties of affection and/or obligation through his wife with his parents-in-law who are citizens and residents of Romania. He has failed to present any evidence that would indicate they are not *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* within the meaning of MC1, or that his wife's contact and correspondence with them are *casual and infrequent* within the meaning of MC 3. Accordingly, MC 1 and MC 3 are inapplicable to the facts of this case as applied to Applicant's Romanian relatives.

While there is no evidence Applicant owns any property or has any other personal financial holdings in Saudi Arabia, he has repeatedly turned to his siblings in Saudi Arabia for financial assistance when he found himself in need. As discussed herein, his unresolved financial delinquencies indicates he continues at present to be in need of financial assistance, which could again cause him to seek financial help from his Saudi Arabian relatives. Accordingly, he is not entitled to application of MC 5: *Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities* to the facts of this case.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Having done so, I conclude that Applicant has failed to present sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him under Guideline B. Accordingly, Guideline B is decided against Applicant.

## **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-d: Against Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraphs a-b: Against Applicant

SOR ¶ 1-Guideline B: Against Applicant

Subparagraphs a-d: Against Applicant

## **DECISION**

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



Henry Lazzaro  
Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Applicant was only able to provide the year of birth of his siblings.
3. FORM (item 7)
4. Although the creditor names are different, the original amount owing as listed in SOR subparagraph 1.c and as the third entry under collection items in the credit report are virtually identical. Further, the *RPTD* date listed in the credit report for the creditor named in the SOR and the creditor listed as the third entry under collection items are identical.
5. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
6. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
7. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
8. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
9. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
12. *Egan*, 484 U.S. at 528, 531.
13. *Id* at 531.
14. *Egan*, Executive Order 10865, and the Directive.
15. Directive, Additional Procedural Guidance, Item E3.1.14
16. Directive, Additional Procedural Guidance, Item E3.1.15
17. ISCR Case No. 99-0597 (December 13, 2000)
18. FORM (item 8)
19. FORM (item 9)
20. FORM (item 12)
21. see: ISCR Case No. 02-29403 (December 14, 2004)