

KEYWORD: Foreign Influence

DIGEST: Forty-eight year old Applicant immigrated to the U.S. in 1978, became a naturalized U.S. citizen, and resides in the U.S. with his native-born U.S. citizen wife and three native-born U.S. citizen children. His father and siblings are Syrian citizens residing in Syria (his father is a Syrian citizen--with a U.S. "green card"--residing primarily in the U.S.). Syria is a State sponsor of terrorism. Nevertheless, there has been no effort to intimidate his family to influence his actions. The citizenship and residency status of his family members, who are not agents of a foreign government and not in positions to be exploited by a foreign government, do not constitute a security risk. The government's security concerns have been mitigated. Clearance is granted.

CASENO: 04-06386h1

DATE: 02/15/2006

DATE: February 15, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-06386

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

**APPEARANCES**

## **FOR GOVERNMENT**

James B. Norman, Esquire, Deputy Chief Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Forty-eight year old Applicant immigrated to the U.S. in 1978, became a naturalized U.S. citizen, and resides in the U.S. with his native-born U.S. citizen wife and three native-born U.S. citizen children. His father and siblings are Syrian citizens residing in Syria (his father is a Syrian citizen--with a U.S. "green card"--residing primarily in the U.S.). Syria is a State sponsor of terrorism. Nevertheless, there has been no effort to intimidate his family to influence his actions. The citizenship and residency status of his family members, who are not agents of a foreign government and not in positions to be exploited by a foreign government, do not constitute a security risk. The government's security concerns have been mitigated. Clearance is granted.

### **STATEMENT OF THE CASE**

On April 15, 2005, 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 April 25, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the government was ready to proceed, and the case was assigned to me, on October 28, 2005. A notice of hearing was issued that same date. The hearing was held before me on November 15, 2005. During the hearing, two Government exhibits, two Applicant exhibits, and Applicant's testimony were received. The transcript (Tr.) was received on November 28, 2005.

## **RULINGS ON PROCEDURE**

At the commencement of the government case, Department Counsel requested Official Notice be taken of the contents of the following documents: U. S. Department of State, *Country Reports on Human Rights: Syria - 2004*, dated February 28, 2005; U. S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet: Syria*, dated August 31, 2005; U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Syria*, dated October 2005; The Library of Congress, Congressional Research Service, CRS Report for Congress, *Syria: Political Conditions and Relations with the United States After the Iraq War*, dated January 10, 2005; and Executive Order 13338, *Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria*, dated May 11, 2004. Pursuant to Rule 201, Federal Rules of Evidence (F.R.E.), I took Official Notice as requested, without any objection by Applicant. [\(1\)](#)

## **FINDINGS OF FACT**

Applicant has admitted all the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 1.a. through 1.c.). Those admissions are incorporated herein as findings of fact.

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 48-year-old employee of a defense contractor, and he is seeking to obtain a secret security clearance. He was originally granted an interim secret security clearance about two years ago, but the current status of that clearance is not known. [\(2\)](#)

Applicant was born in 1957 in the Syrian Arab Republic (Syria), a country now included on the U.S. Department of State's list of State sponsors of terrorism, [\(3\)](#) and whose interests may be inimical to the United States. It is an "authoritarian regime with virtually absolute authority in the hands of the President," [\(4\)](#) and has been under martial law since 1963. [\(5\)](#) Syria's human rights record is poor. [\(6\)](#) Syria permits a number of terrorist groups within its borders to openly oppose U.S. policies in the Middle East, and American citizens traveling in the country are cautioned to remain vigilant because U.S. interests and citizens might be targeted. [\(7\)](#)

On May 11, 2004, President Bush signed Executive Order 13338, *Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria*, implementing sanctions, in accordance with the *Syria Accountability and Lebanese Sovereignty Restoration Act of 2003*, prohibiting the export to Syria of U.S. products other than food or medicine.<sup>(8)</sup> The U.S. Government recalled its Ambassador to Syria in February 2005, and as of October 2005, the Ambassador had not returned.<sup>(9)</sup>

During 1957-1978, while residing with his family, including three sisters and three brothers, Applicant exercised the rights and privileges of a citizen of Syria. In March 1978, he moved to the United States.<sup>(10)</sup> He enrolled at a U.S. university in September 1978, and eventually, in June 1996, was awarded a BSCE degree.<sup>(11)</sup> In December 1981, he married his first wife, a native-born U.S. citizen, and in June 1985, they were divorced.<sup>(12)</sup> He married his second and current wife, another native-born U.S. citizen, in November 1992.<sup>(13)</sup> They have three native-born children, and reside in the U.S.<sup>(14)</sup>

After residing in the United States for about seven years, in June 1985, Applicant became a naturalized citizen of the United States.<sup>(15)</sup> At the time he took his oath of allegiance and was granted his new citizenship, Applicant renounced any allegiance to a foreign prince. Nevertheless, Applicant considers himself to be a dual citizen of Syria.<sup>(16)</sup> He had been issued a Syrian passport prior to becoming a U.S. citizen, but allowed it to expire and never considered having it renewed.<sup>(17)</sup> He possesses a valid U.S. passport.<sup>(18)</sup>

Considering himself a model U.S. citizen, Applicant contributes to his nation, state, and local governments.<sup>(19)</sup> He has served jury duty, votes in all elections, and is active socially and civically in his community.<sup>(20)</sup> He and his wife own a residence and a vacation property in the U.S., and do not own any property outside the U.S.<sup>(21)</sup>

Applicant's mother is deceased.<sup>(22)</sup> He considers himself close to the remaining members of his immediate family, his father, sisters, and brothers, all of whom are citizens of Syria and still reside there.<sup>(23)</sup> His father, born in 1933,<sup>(24)</sup> was in wholesale produce, but is now retired, and resides part of the year in Syria,<sup>(25)</sup> and a greater part of the year in the U.S. with Applicant.<sup>(26)</sup> He possesses a "green card,"<sup>(27)</sup> and hopes to learn enough English to enable him to become a naturalized U.S. citizen.<sup>(28)</sup>

Applicant's oldest brother, born in 1965,<sup>(29)</sup> is married, with five children.<sup>(30)</sup> His wife is a homemaker.<sup>(31)</sup> This brother owns a company, with 20-25 employees, that manufactures children's clothing.<sup>(32)</sup> They do not correspond by letter or e-mail, but do try to speak with each other by telephone every couple of weeks.<sup>(33)</sup> His middle brother, born in

1965,<sup>(34)</sup> is married, with two children.<sup>(35)</sup> His wife is a homemaker.<sup>(36)</sup> This brother is a physician in internal medicine in a private clinic and laboratory.<sup>(37)</sup> They speak periodically on a less frequent basis than with his oldest brother.<sup>(38)</sup> He previously applied for an immigrant visa to practice his specialty in the U.S. The visa was approved about the time he was to get married, so his application was placed into a lower priority.<sup>(39)</sup> Applicant's youngest brother, born in 1971,<sup>(40)</sup> is married, with one child.<sup>(41)</sup> His wife is a homemaker.<sup>(42)</sup> They speak periodically.<sup>(43)</sup>

Applicant's oldest sister, born in 1959,<sup>(44)</sup> is divorced, and unemployed.<sup>(45)</sup> She is supported by their father and one older brother.<sup>(46)</sup> His middle sister, a homemaker born in 1963,<sup>(47)</sup> is married to a paper products salesman, and they have four children.<sup>(48)</sup> His youngest sister, age unspecified, is a homemaker married to another paper products salesman, and they have four children.<sup>(49)</sup>

All of Applicant's siblings have completed immigration applications.<sup>(50)</sup> None of them are politically active in Syria;<sup>(51)</sup> they do not work with the government;<sup>(52)</sup> they are not agents of a foreign power;<sup>(53)</sup> and, they are not involved with the ruling Arab Socialist Ba'ath Party.<sup>(54)</sup> Furthermore, no member of his family has ever been visited by agents of the Syrian government, and there has been no effort to intimidate them to influence his actions.<sup>(55)</sup>

After he initially arrived in the U.S., Applicant did not return to Syria for a lengthy period of time. However, commencing in about 1992, he has generally traveled there every two years, except when he had health issues, and one year when he returned on two occasions in the same year.<sup>(56)</sup>

Applicant was previously employed as a principal professional by a U.S. company in the U.S. from January 1993 until April 2003.<sup>(57)</sup> He has been employed as a senior project engineer by a U.S. government contractor since April 2003.<sup>(58)</sup> His work on particular subcontracts required that he travel overseas to Iraq and Afghanistan on a number of occasions in support of the war on terror.<sup>(59)</sup> The President of his current employer has known Applicant for five years, personally attests to his character, and supports his application for a security clearance.<sup>(60)</sup>

## **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 guideline most pertinent to an evaluation of the facts of this case:

**[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 guideline 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<sup>(61)</sup> 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.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

## 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 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 father and six siblings are citizens of Syria. In the case of the siblings, they are both citizens and residents of Syria. His father is a part-time resident of Syria, when not residing in the U.S. 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. <sup>(62)</sup>

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 government or any intelligence services or organizations. His brothers and brothers-in-law are all employed in private non-governmental businesses or enterprises, and his sisters and sisters-in-law are either full-time homemakers or divorced and unemployed. 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. His family members keep a generally low profile in Syria and are not politically active. In nearly 50 years, the Syrian government has never indicated any interest in their activities or in their relationship with Applicant. If past experience is significant in forecasting future conduct, it appears the Syrian government is disinterested in Applicant and his family.

The residence and citizenship of Applicant's immediate family members are clearly a 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 condition in this instance is mitigated by the application of 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 father, and to a certain extent, his brothers, 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. With respect to them, I find FI MC E2.A2.1.3.3. is applicable.

Applicant's interests in the U.S. are substantial. His wife and three children are native-born U.S. citizens, residing in the U.S. Applicant owns no property overseas, but does own two properties in the U.S. His bank accounts and retirement accounts are in the U.S. These facts fall 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 find 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, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case under Guideline B. Accordingly, allegations 1.a. through 1.c. 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 B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: 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. 30.
2. Tr. 5.
3. U. S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet: Syria*, dated August 31, 2005, at 2.
4. U. S. Department of State, *Country Reports on Human Rights: Syria - 2004*, dated February 28, 2005, at 1.
5. *Id.*
6. *Id.*
7. U. S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet: Syria*, *supra* note 3, at 2.
8. *Id.* at 4.
9. U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Syria*, dated October 2005, at 4.
10. Applicant Exhibit B (Written version of Applicant's Opening Statement, made November 15, 2005), at 1.
11. Government Exhibit 1 (Security Clearance Application (SF 86), dated September 12, 2003), at 2.
12. *Id.* at 3.
13. *Id.*
14. Applicant Exhibit B, *supra* note 10, at 1.
15. Government Exhibit 1, *supra* note 11, at 1.
16. *Id.*
17. Tr. 44.
18. Government Exhibit 2 (U.S. Passport, issued to Applicant on July 25, 1995).
19. Applicant Exhibit B, *supra* note 10, at 2.

20. *Id.* at 1-2.

21. Tr. 45, 66.

22. Government Exhibit 1, *supra* note 11, at 3.

23. Tr. 51-52.

24. Government Exhibit 1, *supra* note 11, at 3.

25. Tr. 58-59.

26. Tr. 59.

27. Tr. 58. Although Applicant had indicated in his SF 86 that his father was a dual U.S.-Syrian citizen, he, in fact, only holds Syrian citizenship. As noted above, he possesses a "green card." *See* Government Exhibit 1, *supra* note 11, at 3-4.

28. Tr. 58-59.

29. Tr. 46-47.

30. Tr. 48.

31. *Id.*

32. Tr. 47.

33. Tr. 50, 53.

34. Tr. 52.

35. Tr. 53.

36. *Id.*

37. Tr. 52.

38. Tr. 53.

39. Tr. 52, 60.

40. Tr. 54.

41. *Id.*

42. *Id.*

43. *Id.*

44. Tr. 55.

45. *Id.*

46. Tr. 56.

47. *Id.*

48. *Id.*
49. Tr. 57.
50. Tr. 59-60.
51. Tr. 60-61, 64.
52. Tr. 61.
53. Tr. 65.
54. *Id.*
55. Tr. 65-66.
56. Tr. 33, 67-68. One year he took a planned vacation to Syria and a follow-up emergency trip to accompany his mother's coffin from the U.S. to Syria for burial.
57. Government Exhibit 1, *supra* note 11, at 2.
58. *Id.*
59. Tr. 32.
60. Applicant Exhibit A (Letter from President of employer, dated November 11, 2005).
61. 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).
62. ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.