

DATE: March 23, 2006

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 04-11837

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

Randall Dudley, Personal Representative

**SYNOPSIS**

Applicant was employed in Saudi Arabia by a company owned by a Saudi Arabian Prince from 1987 until 1998. He also worked for a month on a yacht owned by the Prince in March 1999. While in the Prince's employ, Applicant arranged for electronic equipment to be brought into Saudi Arabia aboard the Prince's airliner with full knowledge and occasionally at the behest of the United States Embassy in Saudi Arabia. Clearance is granted.

**STATEMENT OF THE CASE**

On November 19, 2004, 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. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence) and Guideline E (personal conduct). Applicant submitted a response to the SOR that was received by DOHA on December 3, 2004, admitted both Guideline B allegations, denied the sole Guideline E allegation, and requested a hearing.

The case was assigned to me on July 5, 2005. A notice of hearing was issued on July 27, 2005, scheduling the hearing for August 18, 2005. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4. GE 1 and 2 were admitted into the record and administrative notice was taken of GE 3 and 4 without objection. Applicant testified and submitted two documentary exhibits that were marked as Applicant's Exhibits (AE) 1 and 2, and admitted into the record without objection. The transcript was received on August 25, 2005.

**FINDINGS OF FACT**

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

Applicant is 66 years old and has been employed by a defense contractor as a switch technician since July 2001. He was retired from June 1998 until July 2001. Before retiring, Applicant worked as a communications manager from August 1987 until May 1998 for an electronics company in Saudi Arabia that was owned by a Saudi Arabian Prince. Applicant also worked on the Prince's yacht without pay while it toured the Caribbean Sea in March 1999.

Applicant has not had any contact with the Saudi Arabian Prince or any other Saudi Arabian citizens since March 1999. His relationship with the Prince was as a long-term and apparently trusted employee. He received \$50,000.00 in severance pay when he retired in accordance with standard Saudi Arabian law, and had no continuing financial interest in Saudi Arabia. The Saudi Arabian company that employed Applicant provided substantial service to and on behalf of the United States Embassy in Saudi Arabia, in addition to providing services for the Prince and other Saudi Arabian interests.

While working for the Saudi Arabian company, Applicant became acquainted with people who staffed the Prince's yacht. He was contacted by the Prince's employees after his retirement and asked to assist on a Caribbean cruise while the Prince toured hotels throughout the region that he was considering purchasing. Applicant was not paid for his assistance and did not actually stay aboard the yacht, but he was provided with deluxe hotel accommodations, meals, etc. He agreed to provide the requested assistance because of the opportunity it presented to tour the Caribbean in style and without cost.

Between 1990 and approximately 1994, Applicant arranged for the importation of electronics equipment into Saudi Arabia aboard airliners owned by the Prince. The equipment was imported so United States Embassy personnel, other United States citizens living in Saudi Arabia, and a limited number of Saudi Arabian citizens with the concurrence of the U.S. Embassy could access available American television programming. While the importation of such equipment would normally be prohibited under Saudi Arabian law, persons such as the Prince are considered to be above the law and not subject to the same prohibitions that apply to the general public. (AE 1, tab A)

The Ambassador of the United States to the Kingdom of Saudi Arabia from 1989 to 1992 wrote the following about Applicant's alleged "smuggling" of electronics equipment into Saudi Arabia:

. . . In fact, as ambassador, I was constantly put upon by the King and other members of the royal family to assist in the maintenance of various satellite systems they had installed or which the United States Military Training Mission (USMTM) to Saudi Arabia had installed for them. Far from constituting an illegal activity, such systems were an integral part of the official US-Saudi relationship. . . .

Far from breaking Saudi law, (Applicant) was assisting the King, who is (emphasis in original) the law in Saudi Arabia. . . .

Far from serving the private interests of Prince (name omitted) or the Saudi royal family or government in derogation of his duties of loyalty as a citizen of the United States, (Applicant) was in fact supporting officially sponsored cooperation with the Kingdom and the interests of US foreign relations. (AE 1, tab A)

The Acting Deputy Chief of Mission and Counselor for Administrative Affairs at the American Embassy in Riyadh, Saudi Arabia from 1992 until 1994 wrote the following about Applicant's alleged "smuggling" activities:

During this period, the Embassy and its Consulates were experiencing difficulty with its TV reception. I asked (the name of the company that employed Applicant is omitted) to review our TV systems and to make a recommendation as to what would be required to eliminate the problem. . . . I had the Embassy issue a contract to upgrade the TV systems at the Embassy and at the Consulate Generals in Jeddah and Dhahran.

(Applicant) ordered the necessary electronic components and equipment required for improving our TV systems. All of the electronic components and equipment were shipped to Saudi Arabia on Prince (name omitted) private airplane. The Embassy was fully aware of this shipment and how it was brought into the country. The Government of Saudi Arabia was fully aware of this shipment and the means in which it entered the country. . . .

Prince (name omitted) is a member of the Saudi Royal family that rules the Kingdom of Saudi Arabia. The shipping of

electronic components and equipment on his airplane to Saudi Arabia could not have taken place without Prince (name omitted) permission nor without knowledge and consent of the Saudi Royal family.

\* \* \*

In conclusion, Para 2 and 2b. [sic] under the "STATEMENT OF REASONS" for denying (Applicant's) security clearance is not valid. (Applicant) did not violate Saudi laws as (the name of the company that employed Applicant is omitted) in which (Applicant) was employed was full filling [sic] a contract issued by the United States Department of State (U.S. Embassy) to improve the TV systems of the Embassy and it [sic] Consulate Generals. (AE 1, tab B)

### **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 B, pertaining to foreign influence, and Guideline E, pertaining to personal conduct, 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>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>(4)</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</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>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</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>(11)</sup>

### **CONCLUSIONS**

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.

Applicant worked in Saudi Arabia for a company owned by a Saudi Arabian Prince from 1987 until he retired in May 1998. He spent an additional month working on the Prince's yacht in March 1999, while the Prince toured the Caribbean. Applicant was merely an employee of the Prince, he does not have any friends or relatives living in Saudi Arabia; he has no financial interest in that country; and he has not returned there since he retired in 1998. No disqualifying condition exists, and Guideline B is decided for Applicant.

Personal conduct 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 arranged for the importation of electronics equipment into Saudi Arabia aboard the Prince's private airplane, with the Prince's knowledge, at the request of the U.S. Embassy and the Saudi Royal Family, and in furtherance of U.S. foreign relations interests. While such conduct would have been illegal under Saudi Arabian law if performed without authorization provided by the Prince and/or Royal Family, it was perfectly legal with that permission. No disqualifying condition exists, and Guideline E is decided for Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline B: For Applicant

Subparagraph a: For Applicant

Subparagraph b: For Applicant

SOR ¶ 2-Guideline E: For Applicant

Subparagraph a: For 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.

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. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.