

UNITED STATES DEPARTMENT OF COMMERCE  
 UNDER SECRETARY FOR EXPORT ADMINISTRATION  
 WASHINGTON, D.C. 20230

In the Matter of: )

ESSAM ALKADI, )  
 also known as ESSAM AL-KADI )  
 P.O. Box 201 )  
 Dammam 31411 )  
 Saudi Arabia, )

Respondent )

DECISION AND ORDER

On May 16, 1997, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating an administrative proceeding against Essam Alkadi, also known as Essam Al-Kadi<sup>1</sup> (hereinafter collectively referred to as "Alkadi"). The charging letter alleged that Alkadi committed one violation of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)) (hereinafter the "Regulations"),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (hereinafter the "Act").<sup>2</sup> Specifically, the charging

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<sup>1</sup> The alleged violation occurred in 1993. The Regulations governing the violation at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violation that BXA alleges occurred, and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, establish the procedures that apply to the matters set forth in this decision and order.

<sup>2</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential

letter alleged that, on or about December 17, 1993, Alkadi attempted to export a U.S.-origin shotgun from the United States to Saudi Arabia without obtaining from BXA the validated export license required by Section 772.1(b) of the former Regulations, in violation of Section 787.3(b) of the former Regulations.

BXA presented evidence that it received a signed return receipt on August 19, 1997 indicating that the charging letter had been delivered. Because the receipt was returned from Saudi Arabia undated, however, BXA does not know the exact date of service. Under these circumstances, BXA designated August 19, 1997, the day BXA received the return receipt, as the date of service. Alkadi has failed to file an answer to the charging letter, as required by Section 766.7 of the Regulations, and is therefore in default. Thus, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter the "ALJ") find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constitute one violation of the former Regulations by Alkadi, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for that violation is a denial, for a period of three years, of all of Alkadi's export privileges. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for

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Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that, for a period of three years from the date of this Order, Essam Alkadi, also known as Essam Al-Kadi, P.O. Box 201 Dammam 31411, Saudi Arabia, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

SECOND, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm,

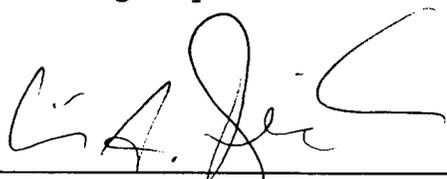
corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

FIFTH, that this Order shall be served on Alkadi and on BXA, and shall be published in the *Federal Register*.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: Jul. 20, 1998

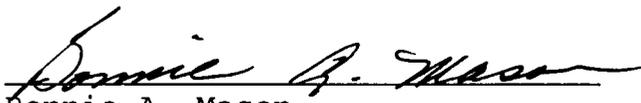
  
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William A. Reinsch  
Under Secretary for  
Export Administration

## CERTIFICATE OF SERVICE

I certify that on February 23, 1998, I caused a copy of the foregoing DECISION AND ORDER signed by William A. Reinsch, Under Secretary for Export Administration, In the Matter of ESSAM ALKADI, also known as ESSAM AL-KADI (Docket No. 97-BXA-10) to be mailed first class, postage prepaid to:

Essam Alkadi  
also known as Essam Al-Kadi  
P.O. Box 201  
Dammam 31411  
Saudi Arabia

I hereby also certify that on February 23, 1998, a copy of the same foregoing DECISION AND ORDER was delivered to Larold Street, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3839, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

  
Bonnie A. Mason  
Executive Secretariat  
Bureau of Export Administration

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
WASHINGTON, D.C. 20230

In the Matter of:	)
ESSAM ALKADI,	)
also known as ESSAM AL-KADI	)
P.O. Box 201	)
Dammam 31411	)
Saudi Arabia,	)
	)
Respondent	)

RECOMMENDED DECISION AND ORDER

On May 16, 1997, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating an administrative proceeding against Essam Alkadi, also known as Essam Al-Kadi (hereinafter collectively referred to as "Alkadi"). The charging letter alleged that Alkadi committed one violation of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)) (hereinafter the "Regulations"),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp.

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<sup>1</sup> The alleged violation occurred in 1993. The Regulations governing the violation at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violation that BXA alleges occurred, and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, currently codified at 15 C.F.R. Parts 730-774, establish the procedures that apply to the matters set forth in this default proceeding.

1997)) (hereinafter the "Act").<sup>2</sup> Specifically, the charging letter alleged that, on or about December 17, 1993, Alkadi attempted to export a U.S.-origin shotgun from the United States to Saudi Arabia without obtaining from BXA the validated export license required by Section 772.1(b) of the former Regulations, in violation of Section 787.3(b) of the former Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at his last known address. In accordance with that section, on May 16, 1997, BXA sent to Alkadi, at his address in Saudi Arabia, notice that it had issued a charging letter against him.

BXA states that it received a signed return receipt on August 19, 1997 indicating that the charging letter had been delivered. Because the receipt was returned from Saudi Arabia undated, however, BXA does not know the exact date of service. Under these circumstances, and for the purpose of this default proceeding, BXA designated August 19, 1997, the day BXA received the return receipt, as the date of service. To date, Alkadi has filed no answer. Accordingly, because Alkadi has not answered the charging letter within 30 days from the time he received

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<sup>2</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

notice of issuance of the charging letter, as required by and in the manner set forth in Section 766.6 of the Regulations, Alkadi is in default.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I therefore find the facts to be as alleged in the charging letter, and hereby determine that Alkadi violated Section 787.3(b) of the former Regulations by attempting to export a U.S.-origin shotgun from the United States to Saudi Arabia without the required export license from BXA.

Section 764.3 of the Regulations establishes the sanctions available for the violation charged in this default proceeding. The applicable sanctions as set forth in the Regulations are a civil monetary penalty, suspension from practice before the Department of Commerce, and/or a denial of export privileges. See, 15 C.F.R. § 764.3 (1997).

Because Alkadi violated the former Regulations by failing to obtain the required export license, BXA urges that I recommend to the Under Secretary for Export Administration<sup>3</sup> that all of Alkadi's export privileges be denied for three years, for the following reasons. First, BXA asserts that Alkadi violated Section 787.3(b) of the former Regulations by failing to obtain the required export license. BXA also explains that, in preparing to depart from the United States after graduating from

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<sup>3</sup> Pursuant to Section 13(c)(1) of the Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge issues a recommended decision which is reviewed by the Under Secretary for Export Administration who issues the final decision for the agency.

college, Alkadi put the shotgun at issue in a packing box along with several other items to be shipped to Saudi Arabia. When airport officials examined the container with an x-ray scan, the device detected the presence of a shotgun, prompting the authorities to detain the shipment because Alkadi had not declared that the shotgun was among the items being shipped to Saudi Arabia. BXA's evidence indicates that, at the time that Alkadi attempted to export the shotgun, the firearm was classified on the Commerce Department's Commodity Control List under ECCN 0A84C, and required a validated license for export to Saudi Arabia. Alkadi failed to obtain that license.

Second, BXA claims that Alkadi has not demonstrated that he has any intention of ever resolving this matter, either through the hearing process or through settlement, or that he would pay a civil penalty if one were to be imposed. Because Alkadi is a foreign person and resides in Saudi Arabia, BXA could not obtain the personal jurisdiction over him that is necessary if BXA were to try to collect a civil penalty through the courts, rendering any monetary judgment against Alkadi meaningless. Under these circumstances, BXA believes that the denial of all Alkadi's export privileges is the appropriate sanction.

Finally, given the fact that Alkadi is charged with a single violation in connection with an attempt to ship a shotgun to Saudi Arabia, BXA asserts that a three-year export denial, rather than any longer denial period, is warranted. BXA believes that a three-year denial period would clearly make the point to Alkadi

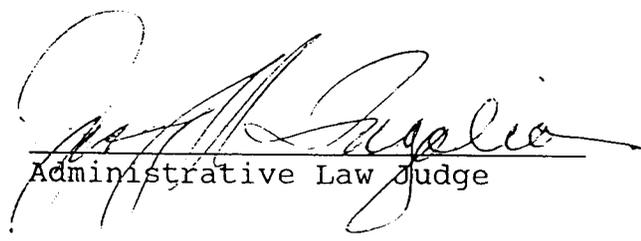
and others that ignorance of the law is no excuse, and that there are consequences to be paid for failing to comply with U.S. export control laws, even for those who would claim relative inexperience.

Given the foregoing, I concur with BXA, and recommend that the Under Secretary for Export Administration enter an Order against Alkadi, denying all of his export privileges for a period of three years.<sup>4</sup>

Accordingly, I am referring my recommended decision and order to the Under Secretary for review and final action for the agency, without further notice to the respondent, as provided in Section 766.7 of the Regulations.

Within 30 days after receipt of this recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order. See § 766.22(c) of the Regulations.

Dated: 01/09/98

  
Administrative Law Judge

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<sup>4</sup> Denial orders can be either "standard" or "non-standard." A standard order denying export privileges is appropriate in this case. The terms of a standard denial order are set forth in Supplement No. 1 to Part 764 of the Regulations.



ES64-13  
UNITED STATES DEPARTMENT OF COMMERCE  
Bureau of Export Administration  
Washington, D.C. 20230

MAY 16 1997

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Mr. Essam Alkadi,  
also known as Essam Al-Kadi  
P.O. Box 201  
Dammam 31411  
Saudi Arabia

Dear Mr. Alkadi:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), hereby charges that, as described in detail below, Essam Alkadi, also known as Essam Al-Kadi (hereinafter "Alkadi"), has violated the Export Administration Regulations (61 Fed. Reg. 12734-13041, March 25, 1996, to be codified at 15 C.F.R. Parts 730-774) (hereinafter the "Regulations"),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (hereinafter the "Act").<sup>2</sup>

Facts constituting violations:

CHARGE 1

On or about December 17, 1993, Alkadi attempted to export a U.S.-origin shotgun from the United States to Saudi Arabia without obtaining from BXA the validated export license required by Section 772.1(b) of the former Regulations. BXA alleges that, in doing an act that constitutes an attempt to bring about a violation of the Act or any regulation, order, or license issued thereunder, Alkadi committed one violation of Section 787.3(b) of the former Regulations.

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<sup>1</sup> The alleged violation occurred in 1993. The Regulations governing the violation at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violation that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, to be codified at 15 C.F.R. Parts 730-774, establish the procedures that apply to the matters set forth in this charging letter.

<sup>2</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (61 Fed. Reg. 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).





ES69-14  
UNITED STATES DEPARTMENT OF COMMERCE  
Bureau of Export Administration  
Washington, D.C. 20230

MAY 16 1997

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Mr. Essam Alkadi,  
also known as Essam Al-Kadi  
P.O. Box 201  
Dammam 31411  
Saudi Arabia

Dear Mr. Alkadi:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), hereby charges that, as described in detail below, Essam Alkadi, also known as Essam Al-Kadi (hereinafter "Alkadi"), has violated the Export Administration Regulations (61 Fed. Reg. 12734-13041, March 25, 1996, to be codified at 15 C.F.R. Parts 730-774) (hereinafter the "Regulations"),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (hereinafter the "Act").<sup>2</sup>

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<sup>1</sup> The alleged violation occurred in 1993. The Regulations governing the violation at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violation that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, to be codified at 15 C.F.R. Parts 730-774, establish the procedures that apply to the matters set forth in this charging letter.

<sup>2</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (61 Fed. Reg. 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).



Accordingly, Alkadi is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

Imposition of the maximum civil penalty of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If Alkadi fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7. Alkadi is further notified that he is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with his answer, to be represented by counsel, and to seek a settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, Alkadi's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of Alkadi's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Lairold M. Street, Esq." below the address. Mr. Street may be contacted by telephone at (202) 482-5311.

Sincerely,



Mark D. Menefee  
Acting Director  
Office of Export Enforcement

Enclosures

Accordingly, Alkadi is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

Imposition of the maximum civil penalty of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);

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Copies of relevant Parts of the Regulations are enclosed.

If Alkadi fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7. Alkadi is further notified that he is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with his answer, to be represented by counsel, and to seek a settlement.

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Sincerely,



Mark D. Menefee  
Acting Director  
Office of Export Enforcement

Enclosures