

The Agency's argument is well taken. In *Pinkerton*, the Supreme Court held that a participant in a conspiracy is liable for the substantive offenses committed by co-conspirators in furtherance of the common objective. 328 U.S. at 645–48. In this case, Forward Logistics prepared the SED containing false information of material fact regarding the country of ultimate destination. Forward Logistics prepared the SED as directed by Dr. Strome. The preparation of the false SED was within the scope of the conspiracy, and in a manner reasonably foreseeable by Respondents OTS and Mahdi as a natural consequence of the conspiracy. Accordingly, the violation of § 764.2(g) is attributable to OTS and Mr. Mahdi even though the Respondents did not actually prepare the SED.

5. Knowingly Violating the Export Administration Regulations

The final charge is also found proved. Charge 6 alleges that Mr. Mahdi and OTS violated § 764.2(e) by transferring and forwarding goods from Canada to Iran on or about October 30, 1997 knowing those goods had been exported from the United States in violation of the EAR. Section 764.2(e) prohibits any person from transferring, transporting, or forwarding “any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAR [or] the EAR * * * has occurred.” 15 CFR 764.2(e).

The evidence shows that Mr. Mahdi knew of the United States' embargo against Iran, which restricted the export of U.S. commodities to Iran (Gov't Ex. 3, at 26–27; Gov't PFF 27). As a matter of fact, during the Change of Plea Proceedings before the United States District Court for the Middle District of Florida (Honorable Anne C. Conway) in Orlando, Florida on August 24, 1999, Mr. Mahdi testified that he knew that Dr. Strome could not lawfully export the goods to Iran without the assistance of Mahdi and OTS. (Gov't Ex. 3, at 27–28). This knowledge is imputed to OTS, on whose behalf Mr. Mahdi was acting. *See generally, In re: Hellenic, Inc.*, 252 F.3d 391, 395 (5th Cir. 2001) (“An agent's knowledge is imputed to the corporation where the agent is acting within the scope of his authority and where the knowledge relates to matters within the scope of that authority * * * (C)ourts generally agree that the knowledge of directors or key officers, such as the president and vice president, is imputed to the corporation).

The facts further show that Danzas shipped the oil field equipment ordered

by OTS under reference number 701–1302–TSI to Iran via Cypress. (Tr. 153–55, 169–72, 177–78; Gov't Ex. 10; Gov't PFF 25–26). Moreover, so that Canadian export law would apply, the country of origin for the equipment was falsely identified as Canada. *Id.* the true country of origin was the United States. These activities constitute a violation of § 764.2(e) for which Mr. Mahdi and OTS are liable.

VIII. Reason for the Sanction

Based on the number and gravity of the offenses and the fact that it appears that Mr. Mahdi and OTS may resume efforts to make unauthorized exports from the United States, the Agency's proposed sanction of denial of U.S. export privileges for 20 years is deemed appropriate.

There is an on-going war against terrorism. The events of September 11, 2001 reveal that international terrorism is a real threat to the national security of the United States. To limit and curtail the financial support of terrorism the United States established an embargo against Iran. The Respondents circumvention of the embargo by exporting goods destined for Iran through Canada cannot be tolerated. The facts show that in order to achieve their objective Respondents made false statements, or caused false statements to be made, on various export documents in the United States and in Canada. The facts also show that BITS was not the only U.S. company that had business dealings with OTS. Mr. Mahdi and OTS solicited quotations on behalf of customers in Iran and other Middle Eastern countries from a number of U.S. companies and bought equipment from the lowest bidder. (Tr. 224–25, 244–47; Gov't Ex. 21, 21A, 25; Gov't PFF 40–41). As Agency counsel correctly points out, Respondents efforts were extensive and far-reaching.

The value of the goods actually exported and those that Respondents attempted to export exceeded \$232,834. Dr. Strome, Mr. Mahdi, and Mahdik Mahdi all perceived that the business venture was lucrative and could prove to be prosperous. (Tr. 253; Gov't Ex. 6, at 2; Gov't PFF 14). As recent as April 2002, BIS learned that Mr. Mahdi's brother in Amman, Jordan posted an advertisement soliciting bids for a certain type of catalyst. (Tr. 260–62; Gov't Ex. 29). The record shows that Mr. Mahdi's brother, owner of Zawana Trading, had been instrumental in facilitating the unauthorized export of equipment to Middle Eastern countries such as Iraq. (Tr. 178, 224–26, 236–238, 244–47, 253; Gov't Ex. 6, at 6; Gov't Ex. 21, 21A, 25, 26; Gov't PFF 14, 40–41,

44). The Agency notes that Mr. Mahdi and OTS are well positioned in Canada where the export laws are less stringent with respect to Iran. By the same token U.S. export laws concerning Canada are minimal. Thus, Respondents have an opportunity to resume their efforts if they so choose.

In order to deter such actions and prevent Respondents from committing future violations of the EAA and EAR, a significant denial order is not only warranted. It is justifiable. Agency counsel has established that a 20-year order denying export privileges is not without precedent. *See In the Matter of Miguel Angel Fajardo*, 66 FR 30162 (Jun. 5, 2001); *In the Matter of Fawzi Mustapha Assi*, 64 FR 40816 (Jul. 28, 1999); *In the Matter of Ian Ace*, 62 FR 43505 (Aug. 14, 1997).

The Recommended Decision and Order is being referred to the Under Secretary for review and final action. As provided by § 766.17(b)(2) of the EAR, the recommended decision and order is being served by express mail. Because the Under Secretary must review the decision in a short time frame, all papers filed with the Under Secretary in response to the recommended decision and order must be sent by personal delivery, facsimile, express mail, or other overnight carrier as provided in § 766.22(a) of the EAR. Submissions by the parties must be filed with the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room H–3898, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within 12 days from the date of issuance of this Recommended Decision and Order. Thereafter, the parties have eight days from receipt of any response(s) in which to submit replies.

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* 15 CFR 766.22(c).

Done and dated August 26, 2003, at Norfolk, Virginia.

Peter A. Fitzpatrick,
Administrative Law Judge, Norfolk, Virginia.

Attachment A—Exhibit List

A. Judge's Exhibit

Judge's Ex. 1—Memorandum to File dated 24 April 2003 from Lucinda Shinault, Paralegal to the Administrative Law Judge
Judge's Ex. 2—Return to Sender Letter dated April 21st, 2002⁹

⁹J. Khan signed for the Federal Express package on 4/17/2003. Thus, the unidentified correspondent