

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



EXH-14

RICHARD A. CHICHAKLI,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 3-06-CV-1546-N
)	
ADAM SZUBIN, Director, Office of)	ECF CASE
Foreign Assets Control, United States)	
Department of the Treasury, in his)	
official capacity <u>et al.</u> ,)	
)	
Defendants.)	

DECLARATION OF ADAM J. SZUBIN

ADAM J. SZUBIN, pursuant to 28 U.S.C. § 1746, declares the following under penalty of perjury:

1. I am providing this declaration based on my personal knowledge and on information obtained in the course of my employment.

2. I am the Director of the U.S. Department of the Treasury's ("Treasury") Office of Foreign Assets Control ("OFAC"), and have been employed in this capacity since September 3, 2006. Prior to becoming the Director, I was Senior Advisor to Under Secretary Stuart Levey in Treasury's Office of Terrorism and Financial Intelligence, a position I assumed in August 2004. Before joining Treasury, I was an attorney at the Department of Justice, serving as Counsel to the Deputy Attorney General from August 2003 to August 2004, and working in the Civil Division from September 2000 to August 2003.

OFAC's Mission and Authority

3. The Department of the Treasury's OFAC is the office principally responsible for administering U.S. economic sanctions programs. These programs are primarily directed against foreign states and nationals, including sponsors of global terrorism and foreign narcotics

traffickers, to implement U.S. foreign policy and national security goals. Pursuant to authority delegated by the President to the Secretary of the Treasury, OFAC acts under Presidential wartime and peacetime national emergency powers. OFAC also acts under authority granted by specific legislation to impose controls on transactions and to freeze, or "block," certain foreign property and interests in property within the United States or in the possession or control of U.S. persons.

4. OFAC currently administers over 20 economic sanctions programs against foreign governments, entities and individuals. At present, OFAC administers sanctions programs relating to Iran, Iraq, Sudan, Liberia, Democratic Republic of the Congo, Cote d'Ivoire, Syria, Zimbabwe, Belarus, Burma, Cuba and the Western Balkans and continues to block certain previously frozen assets of Yugoslavia, and North Korea. In addition to implementing sanctions programs against terrorists pursuant to Executive Orders 12947 and 13224, OFAC also implements sanctions programs against narcotics kingpins of the "Cali Cartel" pursuant to Executive Order 12978 and administers the Foreign Narcotics Kingpin Sanctions Regulations issued pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. §§ 1901-1908, 8 U.S.C. § 1182.

5. As Director of OFAC, I am responsible for the implementation, administration, and enforcement of such economic sanctions programs. These responsibilities include enforcement of Presidential blocking orders to ensure the segregation and safeguarding of blocked property, as well as enforcement of restrictions on trade and financial transactions. The restrictions provided for in these programs affect both foreign and U.S. persons.

Presidential Blockings under IEEPA and UNPA

6. The International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706 ("IEEPA"), grants to the President a broad spectrum of powers necessary to deal "with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat." 50 U.S.C. § 1701 (a). The President exercises these IEEPA powers through Executive Orders that impose economic

sanctions to address particular emergencies and delegate IEEPA powers for the programs' administration.

7. Section 5 of the United Nations Participation Act, 22 U.S.C. § 287c, grants the President the authority to apply certain measures that the United States has been called upon to apply by the United Nations Security Council. This authority includes the power to "investigate, regulate, or prohibit, in whole or in part, economic relations . . . involving property subject to the jurisdiction of the United States." 22 U.S.C. § 287c(a).

8. In addition to articulating in an Executive Order a particular threat, the President may also designate specific entities and individuals who pose or contribute to the threat and set forth standards for identifying more such entities and individuals. The President delegates the task of determining who meets these standards to an agency in the Executive Branch, usually the Department of the Treasury. Those who are determined to fit these standards are "designated" and subject to the Executive Order's economic sanctions.

9. A Presidential Executive Order that blocks property constitutes one of the most potent elements of an economic sanctions program. In practice, such Orders require holders of such property to freeze that property, including bank accounts, in their possession or control at the time of the Order, as well as property that later comes into the holders' possession. Blocking actions are not permanent and do not constitute a forfeiture or seizure of assets.

10. Blocking actions can serve a number of objectives. A blocking can deprive the sanctioned party of the benefit of his or her property, prevent the property from being used to further ends that threaten or conflict with United States interests, prevent the sanctioned party from receiving the economic benefits of transactions with United States persons or in the United States market, and limit the flow of hard currency or goods to or for the benefit of that sanctioned party. Blocked assets also may preserve them as a bargaining chip for use by the President in resolving the national emergency that gave rise to the blocking and, in many cases, settling U.S. financial claims against the sanctioned party. For example, the fact that Iranian assets were blocked was directly instrumental in the release of U.S. hostages in Iran in 1981 and the establishment of a funding mechanism to address U.S. claims against Iran.

11. Under sanctions programs where blocking is a component, blockings are designed to swiftly immobilize funds and other types of assets that OFAC has a reason to believe could be

used to finance activity posing a threat to U.S. interests. Thus, blockings and other sanctions set forth in a Presidential Executive Order have immediate effect. In the period between the President's issuance of an Executive Order and OFAC's promulgation of regulations related to the sanctions, as in the case of the present matter, OFAC implements the sanctions consistent with the Executive Order and the overall regulatory framework for administration of economic sanctions programs.

12. Generally, OFAC does not provide prior notice of an impending blocking action because notifying an entity or individual that its assets will be blocked would allow for the dissipation and/or destruction of funds and records before the blocking can occur, thereby placing in jeopardy national security and foreign policy interests underlying the blocking.

13. The property and property interests blocked by OFAC pursuant to an Executive Order may not be transferred, withdrawn, exported, paid, or otherwise dealt in by U.S. persons or in the United States without OFAC's prior authorization. OFAC interprets the term "interest" to include a property interest of any nature whatsoever, direct or indirect, present, future or contingent. *See, e.g.*, 31 C.F.R. 594.306 (Global Terrorism Sanctions Regulations); 31 C.F.R. 595.307 (Terrorism Sanctions Regulations); 31 C.F.R. 541.305 (Zimbabwe Sanctions Regulations). In addition, OFAC's regulations define "property" to include, *inter alia*, items such as bank deposits, savings accounts, contracts, book accounts, letters of credit, and other property, real, personal, or mixed, tangible or intangible, or interest or interests therein. *See, e.g.*, 31 C.F.R. 594.309; 31 C.F.R. 595.310; 31 C.F.R. 541.308.

14. Pursuant to IEEPA-based sanctions programs, OFAC asserts jurisdiction over U.S. persons wherever located in the world, including within the territory of the United States. These sanctions programs typically prohibit U.S. persons from dealing in or conducting transactions in blocked property.

15. A person's status as a U.S. person does not serve as a shield against blocking actions. To allow U.S. persons to hold and transfer blocked assets would undermine the intent and operation of the sanctions programs that OFAC is charged with administering and threaten the U.S. national interests that those programs are meant to protect. As just one example, sanctioned countries and persons could then transact their business through "untouchable", complicit U.S. persons and severely undercut the sanctions program.

16. In certain instances, OFAC may use its authority to license certain transactions that otherwise would be prohibited, when doing so would further U.S. policy. OFAC regularly promulgates in its sanctions regulations general licenses authorizing certain categories of otherwise prohibited activity, and it grants specific licenses on a case-by-case basis. 31 C.F.R. 501.801. In its blocking notices, OFAC explains that it will consider license requests for use of blocked funds to pay costs such as living expenses, attorneys' fees, and corporate operating costs. In addition, OFAC may license blocked parties to access their blocked documents under supervision. Because no two sanctions programs are exactly alike, and because applicants often find themselves in unique situations, OFAC considers such applications on a case-by-case basis in light of all facts presented.

17. As a matter of policy, OFAC provides a mechanism for designated persons to challenge their designations, the blocking of their property, and subsequent inclusion on the list of Specially Designated Nationals, which OFAC compiles and maintains. Such persons may submit arguments or evidence to challenge sufficiency of the basis for the blocking, or to assert mistaken identity. 31 C.F.R. 501.807. The information submitted is considered by OFAC. OFAC has, in the past, revoked blocking orders based upon new information provided by a designated party.

Executive Order 13348

18. On July 22, 2004, President Bush issued Executive Order 13348, "Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia," 68 Fed. Reg. 44855 (July 27, 2004), to address the activities of former Liberian President Charles Taylor and the situation in Liberia. The President determined that Charles Taylor's and other persons' actions and policies, including the depletion of Liberian resources and secreting of Liberian funds and property, constituted an unusual and extraordinary threat to the foreign policy of the United States. President Bush declared a national emergency to deal with this threat. The national emergency and the sanctions set forth in the Order became effective on July 23, 2004.

19. E.O. 13348 followed a series of actions by the United Nations Security Council to address the crisis in Liberia. In Resolution 1521 of December 22, 2003 and Resolution 1532 of March 12, 2004, the Security Council decided, pursuant to Chapter VII of the United Nations

charter, to establish a sanctions program, including both travel restrictions and an asset freeze, related to Charles Taylor, his inner circle, and those supporting the actions and policies of his regime. On June 14, 2004, the Liberia Sanctions Committee of the Security Council issued an initial list of 23 individuals subject to the asset freeze. The United States thereby had an international law obligation to freeze any assets of those persons subject to United States jurisdiction.

20. E.O. 13348 blocks all property and interests in property within the United States, or within the possession or control of U.S. persons, in which there is an interest of any person listed in the Annex to the Order or subsequently determined to be subject to the Order. Blocking means, among other things, that there can be no transfer of, or dealing in, blocked property. The Annex to E.O. 13348 identified 28 individuals determined to be subject to the blocking provisions of the Order.

21. Section 8 of E.O. 13348 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to determine that circumstances no longer warrant the inclusion of an individual in the Annex. One individual included in the Annex, Abbas Fawaz, was removed from the list of Specially Designated Nationals on June 19, 2006, in response to his request for removal due to a change in circumstances. Mr. Fawaz was not subject to U.N. sanctions. Section 6 of E.O. 13348 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions and employ all powers granted to the President by IEEPA and the UNPA necessary to carry out the purposes of the Order, including determining that other individuals or entities meet the terms of the designation criteria set forth in the Order.

OFAC's Investigation and Comprehensive Blocking of Richard A. Chichakli

22. Among the 28 individuals identified by the President in the Annex to E.O. 13348 was Viktor Anatolijevitch Bout, described in the Annex as "Businessman, dealer and transporter of weapons and minerals." Mr. Bout, whose firms were tied to several major arms shipments to Liberia, had already been subjected to a UN travel ban imposed by UN Security Council Resolution 1343 (2001) on individuals involved in the conflict in Liberia and Sierra Leone, and was also included in the list of 23 individuals named by the United Nations on June 14, 2004, as subject to the asset freeze imposed by UNSCR 1532. He had also been cited by media sources

as the most prolific “sanctions buster” and weapons trafficker in areas where international arms embargoes have been imposed on one or both sides in regional conflicts. President Bush subsequently named Bout in the Annex to Executive Order 13413 of October 27, 2006, “Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of Congo,” 71 Fed. Reg. 64105 (Oct. 31, 2006), based on his arms-trafficking activities in the Democratic Republic of Congo.

23. Following the issuance of E.O. 13348, OFAC focused significant investigative efforts on Mr. Bout’s network. This investigation developed extensive information on 30 businesses and 4 individuals who were found to meet the criteria for designation set forth in Section 1(a)(ii)(D) of the Executive Order; specifically, they were found to be entities and individuals “owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly” Viktor Bout, a person whose property and interests in property were blocked pursuant to the Order. See Special Designation and Blocking Memorandum of April 22, 2005, attached at Appendix pages 22-28. Among these 34 individuals and entities were plaintiff Richard Chichakli and 10 companies owned or controlled by him, or acting for or on his behalf. Id. On April 22, 2005, the then-director of OFAC issued the Memorandum to block the funds, accounts and business records of Richard Chichakli and the 10 companies owned or controlled by him, along with 23 other individuals and entities related to the Bout network. The blocking took effect on April 26, 2005.

24. The Administrative Record upon which OFAC relied for plaintiff’s initial designation has previously been provided to Mr. Chichakli and is attached hereto as Appendix pages 78-819. That record consists of an Evidentiary Memorandum summarizing the evidence upon which OFAC relied in making its decision (App. 78-135), as well as the underlying Exhibits containing that evidence (App. 136-819). Because Mr. Chichakli was designated along with other individuals and entities, the complete administrative record contains evidence supporting all of the designations. When he sought administrative reconsideration of his designation (as described more fully below), Mr. Chichakli was provided with a redacted version of the Evidentiary Memorandum containing the complete Background section of the Memorandum and all of the information pertaining to him and to the companies designated because of their relation to him. Mr. Chichakli was also provided with copies of all of the

Exhibits cited in the redacted Evidentiary Memorandum. This same Administrative Record relating to Mr. Chichakli that is being filed with the Court herewith (except that it is my understanding that some additional information has been redacted from the Administrative Record being filed with the Court pursuant to the Court's Privacy Notice and Miscellaneous Order No. 61, as amended).

25. That record demonstrates that Mr. Chichakli has been an integral part of the Bout network for many years. For example, plaintiff's resumé describes his extensive management and coordination of activities for Air Cess, Air Pass, and Centrafican Airlines, all prominent companies in the Bout network that were themselves designated by OFAC in the April 22 Memorandum. See App. 122-123 (Evidentiary Memorandum at 45-46). Mr. Chichakli has also established and registered in the United States several companies that have been essential components in the Bout network and its provision of weapons and other materials and services to numerous regimes, including that of Charles Taylor in Liberia. See App. 123 - 124 (Evidentiary Memorandum at 46-47). The record also establishes Mr. Chichakli's close working relationship with Viktor Bout, both before and after Mr. Bout's inclusion in the Annex to E.O. 13348, as well as Mr. Chichakli's special access to and knowledge of the workings of the Bout network. See App. 123 - 124 (Evidentiary Memorandum at 46-47).

26. Pursuant to the Blocking Memorandum directed at the Bout network, on April 26, 2005, OFAC issued Blocking Notices to Mr. Chichakli, as well as each of the companies identified as owned or controlled by him. See App. 14-28 (Blocking Notice issued to plaintiff). The Blocking Notice explained that, pursuant to E.O. 13348 and IEEPA, any transfer, withdrawal, export, payment or other dealing in blocked property or property interests was prohibited without OFAC's prior authorization. Id. The Notice also explained that OFAC would consider requests for licenses to ameliorate the effects of this blocking action and that such licenses may allow for, among other activities, the payment from blocked funds or accounts of rent, utility, tax and insurance payments. Id. The Notice also explained that, because funds and other assets can be transferred instantaneously, prior notice of OFAC's determination was not provided, consistent with Section 5 of the E.O. Id. In addition, the Notice provided instructions for requesting administrative reconsideration of the designation determination. Id.

27. On April 26, 2005, two OFAC officers arrived at Mr. Chichakli's residence in Richardson, Texas, along with a team of personnel from other agencies, including the Federal Bureau of Investigation, Internal Revenue Service, Immigration and Customs Enforcement, and the Dallas Police Department. The FBI agents executed a search and seizure warrant issued as part of a separate criminal matter, and seized a number of items and documents. One OFAC officer presented a copy of the Blocking Notice to Mr. Chichakli's wife, as Mr. Chichakli had agreed to leave the premises during the course of the search. Later in the day, OFAC officers personally served Mr. Chichakli with a Blocking Notice, which he signed. See App. 16 (Blocking Notice signed by plaintiff).

28. The OFAC officers then traveled to Mr. Chichakli's office, located at 811 South Central Expressway, Suite 210, Richardson, Texas, which was also being searched by a team of personnel from other agencies pursuant to a warrant. A search was also conducted at the residence of Mr. Chichakli's secretary in Plano, Texas.

29. From April 26 to 28, 2005, Mr. Chichakli requested a series of licenses from OFAC for a variety of purposes, including basic personal maintenance expenses, salaries, business telephone bills, airline tickets, and unemployment taxes. On April 26, OFAC issued license LB-8, authorizing plaintiff to remain in his personal residence and conduct transactions necessary for personal maintenance, and license LB-9, authorizing plaintiff to obtain legal services related to the designation and conduct other transactions related to such legal services. On April 29, OFAC amended both licenses to reflect subsequent information provided by Mr. Chichakli. On May 20, 2005, OFAC issued license LB-20 to Mr. Chichakli, Mr. Scott, and the Community Credit Union in Plano, TX, to authorize payment of counsel for the legal services authorized by OFAC in LB-9.

Request for Reconsideration

30. By letters dated April 27 and 28, 2005, Mr. Chichakli requested a copy of the administrative record underlying his designation and sought administrative reconsideration of the designation. See App. 29 - 31. A true and correct copy of all of the correspondence between OFAC and Mr. Chichakli and/or his counsel, Mr. Clay Scott, related to Mr. Chichakli's request for reconsideration is attached hereto as Appendix pages 29 - 77.

31. By letter dated April 29, 2005, OFAC responded to Mr. Chichakli's request and informed him that OFAC would provide him with a copy of the information upon which his designation was based, and that, in conducting a comprehensive reconsideration of the designation, OFAC would consider the information upon which the original designation was based, any additional material provided to OFAC by Mr. Chichakli, and any additional information available to the Government. See App. 32. In this regard, OFAC advised Mr. Chichakli that any material he wished to submit as part of the reconsideration process should be received by June 10, 2005.

32. By letter dated May 9, 2005, OFAC provided Mr. Chichakli with the Administrative Record upon which his designation was based, as described above. See App. 33. This Administrative Record consisted of a redacted Evidentiary Memorandum summarizing the evidence in the record pertaining to Mr. Chichakli, and 54 exhibits containing that evidence. Mr. Chichakli was invited to provide any additional information he wished OFAC to consider in its review. Mr. Chichakli was given until June 24, 2005, an additional two weeks from the initial deadline of June 10, to provide such information. Id.

33. Mr. Chichakli submitted a letter dated June 2, 2005 in support of his request for reconsideration. See App. 34-38. After reviewing Mr. Chichakli's June 2 submission, OFAC wrote to Mr. Chichakli's counsel, by a letter dated June 10, 2005, to inform him of Mr. Chichakli's submission, "not[ing] in particular that Mr. Chichakli's June [2], 2005 submission includes no exhibits or affidavits corroborating the assertions Mr. Chichakli makes therein." See App. 39. Mr. Chichakli's counsel, Mr. Scott, subsequently submitted a letter dated June 23, 2005, in support of Mr. Chichakli's request for reconsideration. See App. 40-49. The only evidence submitted by either Mr. Chichakli or his counsel consisted of four pages of academic transcripts appended to Mr. Scott's June 23 letter. See App. 46-49. Although that letter references additional attached materials, those materials were not included with the letter. Id.

34. On November 9, 2005, Mr. Scott faxed OFAC a copy of a letter he had sent John Cox of the Criminal Division of the United States Department of Justice, in which he suggests a meeting to discuss immunity for Mr. Chichakli and notes that "Richard [Chichakli] believes that he cannot only produce Viktor Bout for the conference, but also Sergei Bout." App. 57-58.

35. On December 1, 2005, the United Nations Security Council Sanctions Committee on Liberia added Mr. Chichakli and his companies to the Liberia asset freeze list, thereby imposing an obligation on all U.N. Member States to take steps to freeze Mr. Chichakli's assets.

36. By letter dated April 12, 2006, OFAC informed Mr. Chichakli that a preliminary decision had been reached to deny his request for reconsideration. See App. 62-68. In this letter, OFAC provided an explanation of the bases for the preliminary decision, as well as copies of the 60 unclassified Exhibits used to make the preliminary decision. Id. OFAC invited Mr. Chichakli to provide any additional information that he wished OFAC to consider in reaching a final decision. Id.

37. By letter dated May 3, 2006, Mr. Scott informed OFAC that "there is nothing else to be provided." See App. 72.

38. Following a final review process, I determined on behalf of OFAC that Mr. Chichakli's request for reconsideration should be denied. I issued a final determination letter to Mr. Scott informing him of this decision on September 26, 2006. See App. 77. The Administrative Record supporting this determination consisted of an Evidentiary Memorandum (hereinafter "Reconsideration Evidentiary Memorandum") summarizing the evidence supporting the decision, as well as 60 Exhibits containing that evidence (which had been provided to Mr. Chichakli in OFAC's April 12, 2006 letter referenced above). That Administrative Record on reconsideration is attached as Appendix pages 820-1196. In addition, I relied upon a classified memorandum and underlying exhibits, also classified, in reaching the determination to deny Mr. Chichakli's request for reconsideration. It is my understanding that the Department of Justice is making arrangements to provide that classified administrative record to the Court for its review on an ex parte, in camera basis pursuant to 50 U.S.C. § 1702(c).

39. The Administrative Record supporting my decision to deny Mr. Chichakli's request for reconsideration demonstrated that, contrary to Mr. Chichakli's unsupported assertions, he had in fact acted or purported to act for or on behalf of, directly or indirectly, Viktor Bout, both before and after Mr. Bout's inclusion in the Annex to E.O. 13348. The record included, among other things, evidence that Mr. Bout continued to control the UAE branch of Mr. Chichakli's firm, Air Bas Transportation Inc., and that this branch made payments to the U.S. office after Mr. Bout's designation; that Mr. Chichakli acted to facilitate the purchase of an

aircraft on behalf of another Bout-affiliated firm after Mr. Bout's designation; that Mr. Chichakli remained listed as a Director of a Bout-related firm after Mr. Bout's designation and still maintained a credit card for Mr. Bout after his designation; and that a copy of Mr. Chichakli's resume found in his office that was identical to the resume originally relied upon by OFAC (which Mr. Chichakli claimed was false) stated that Mr. Chichakli had served as Chief Financial Officer for several Bout-related companies. In addition, the record contained evidence of Mr. Chichakli's long-standing activity for or on behalf of Mr. Bout. See App. 820 - 838__ (Reconsideration Evidentiary Memorandum); App. 839 -- 1196 (Administrative Record on Reconsideration).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of December, 2006.



ADAM J. SZUBIN
Director
Office of Foreign Assets Control
Department of the Treasury