

OCT 25 2004



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Bureau of Industry and Security**  
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Mr. Mohammad Al-Mashan  
Jleeb Asoukh Commercial Area  
Alwaha Complex, First Floor #1  
Safat, Kuwait

Dear Mr. Al-Mashan:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS") has reason to believe that you, Mohammad Al-Mashan ("Al-Mashan"), of Safat, Kuwait, acting in your individual capacity as Director of the Mohammad Al-Mashan Group, have committed two violations of the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act").<sup>2</sup> Specifically, BIS charges that Al-Mashan committed the following violations:

**Charge 1 15 C.F.R. §764.2(a) - Violating a BIS License Condition.**

During the period between on or about October 27, 1999 and on or about February 23, 2000, Al-Mashan engaged in conduct prohibited by the Regulations when he transferred an uncooled infrared camera, an item subject to the Regulations, to an individual from the United Arab Emirates in violation of a BIS license condition. The BIS license that authorized the export of the camera from the United States to Al-Mashan prohibited the resale, transfer, or reexport of the camera without prior authorization

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The violations charged occurred from 1999 through 2000. The Regulations governing the violations at issue are found in the 1999 through 2000 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999-2000)). The 2004 Regulations establish the procedures that apply to this matter.

<sup>2</sup> 50 U.S.C. app. §§ 2401- 2420 (2000). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 Fed. Reg. 48763, August 10, 2004), continues the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis>



by the U.S. Government. In transferring the camera without prior U.S. Government authorization, Al-Mashan committed one violation of Section 764.2(a) of the Regulations.

**Charge 2 15 C.F.R. §764.2(e) - Transferring an Uncooled Infrared Camera with Knowledge that a Violation Would Occur in Connection with the Item.**

During the period between on or about October 27, 1999 and on or about February 23, 2000, Al-Mashan transferred an uncooled infrared camera, an item subject to the Regulations, to an individual from the United Arab Emirates with knowledge or reason to know that a violation would subsequently occur in connection with the item. Specifically, at the time Al-Mashan transferred the camera, he knew or had reason to know that the BIS license authorizing the export of the camera from the United States to Al-Mashan prohibited the resale, transfer, or reexport of the camera by Al-Mashan without prior U.S. Government authorization. In transferring the camera with such knowledge, Al-Mashan committed one violation of Section 764.2(e) of the Regulations.

Accordingly, Al-Mashan 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:

The maximum civil penalty allowed by law of \$11,000 per violation;<sup>3</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Al-Mashan fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If Al-Mashan defaults, the Administrative Law Judge may find the charges alleged in this letter to be true without hearing or further notice to Al-Mashan. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each charge in this letter.

Al-Mashan is further notified that he is entitled to an agency hearing on the record if he files a written demand for one with his answer. (Regulations, Section 766.6). Al-Mashan is also entitled to be

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<sup>3</sup> See 15 C.F.R. §6.4(a)(4) (2004). The maximum penalty for the violation of national security controls imposed under section five of the Act is \$120,000 per violation if the underlying transaction occurred from November 13, 2000 through August 20, 2001. See 15 C.F.R. §6.4(a)(7) (2004).

Mohammad Al-Mashan  
Charging Letter  
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represented by counsel or other authorized representative who has power of attorney to represent him. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Al-Mashan have a proposal to settle this case, he or his representative should transmit the offer to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Al-Mashan's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

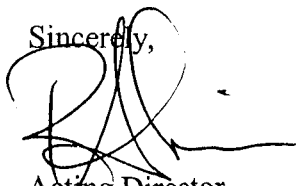
U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of Al-Mashan's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Charles Wall  
Room H-3839  
United States Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Charles Wall is the attorney representing BIS in this case; any communications that Al-Mashan may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,



Acting Director  
Office of Export Enforcement

*Reacted Verison*

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of: )  
)  
Mr. Mohammad Al-Mashan ) 04-BIS-20  
Jleeb Asoukh Commercial Area )  
Alwaha Complex, First Floor #1 )  
Safat, Kuwait )  
)  
and )  
)  
P.O. Box 5909 )  
Safat 13060 Kuwait )  
)  
Respondent. )

RECOMMENDED DECISION AND ORDER

On October 24, 2004, the Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), issued a charging letter initiating this administrative enforcement proceeding against Mohammad Al-Mashan ("Al-Mashan"). The charging letter alleged that Al-Mashan committed one violation of § 764.2(a) and one violation of § 764.2(e) of the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (2006)) (the "Regulations").<sup>1</sup> The Regulations are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000)) (the "Act").<sup>2</sup> In accordance with § 766.7 of the

<sup>1</sup> The violations charged occurred from 1999 through 2000. The Regulations governing the violations at issue are found in the 1999 through 2000 versions of the Code of Federal Regulations (15 CFR Parts 730-774 (1999-2000)). Actions taken during this administrative enforcement proceeding are governed by the Regulations in effect at the time such actions take place.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12,924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000, 3 CFR, 2000 Comp. 397 (2001), continued the Regulations in effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701 - 1706 (2000) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it

Regulations, BIS has moved for the issuance of an Order of Default against Al-Mashan as Al-Mashan has failed to file an answer to the allegations in the charging letter issued by BIS within the time period required by law.

#### **A. Legal Authority for Issuing an Order of Default**

Section 766.7 of the Regulations states that BIS may file a motion for an order of default if a respondent fails to file a timely answer to a charging letter. That section, entitled Default, provides in pertinent part:

Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions.

15 CFR 766.7 (2006).

Pursuant to § 766.6 of the Regulations, a respondent must file an answer to the charging letter "within 30 days after being served with notice of the issuance of the charging letter" initiating the proceeding.

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remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001, 3 CFR, 2001 Comp. 783 (2002), as extended by the Notice of August 2, 2005, 70 FR 45,273 (Aug. 5, 2005), has continued the Regulations in effect under the IEEPA.

### **B. Service of the Notice of Issuance of Charging Letter**

In this case, BIS served notice of issuance of the charging letter in accordance with § 766.3(b)(1) of the Regulations when it sent a copy of the charging letter by registered mail to Al-Mashan at his last known address on October 25, 2004. After the letter was returned unopened, BIS then sent a copy of the charging letter by registered mail to Al-Mashan at the only other known address for him. That letter was also returned to BIS, but postage marks indicated that the letter had remained in Kuwait for approximately one month. Finally, in one last attempt to provide actual notice to Al-Mashan, BIS mailed a copy of the charging letter to his last known address via Federal Express. The final letter was delivered.

Although there is no evidence that the letters were actually refused by Al-Mashan himself, Al-Mashan is determined to have constructively refused delivery as of the date upon which the notice that was sent out on October 25, 2004 was returned to BIS. I find that delivery of a charging letter is deemed constructively refused when the letter has been properly served at the respondent's last known address in accordance with § 766.3 of the Regulations but has been returned to BIS as undeliverable. See In re Export Materials, Inc. (Docket No. 98-BXA-09), 64 FR 40,820, (July 28, 1999) (Decision and Order); see also In re Modern Engineering Services, Ltd. (Docket No. 97-BXA-01), 65 FR 81,822 (Dec. 27, 2000) (Decision and Order). BIS may legally pursue a default judgment against him because more than thirty (30) days have passed without response from Al-Mashan.

### **C. Summary of Violations Charged**

The charging letter issued by BIS included a total of two charges. Specifically, the charging letter alleged that during the period between on or about October 27, 1999 and on or about February 23, 2000, Al-Mashan engaged in conduct prohibited by the Regulations when he transferred an uncooled infrared camera, an item subject to the Regulations, to an individual from the United Arab Emirates in violation of a BIS license condition. The BIS license that authorized the export of the camera from the United States to Al-Mashan prohibited the resale, transfer, or reexport of the camera to anyone other than the approved end-users on the license without prior authorization by the U.S. Government. In transferring the camera to a non-approved end-user without prior U.S. Government authorization, Al-Mashan committed one violation of § 764.2(a) of the Regulations.

The charging letter further alleged that during the period on or about October 27, 1999 and on or about February 23, 2000, Al-Mashan transferred an uncooled infrared camera, an item subject to the Regulations, to an individual from the United Arab Emirates with knowledge or reason to know that a violation would subsequently occur in connection with the item. Specifically, at the time Al-Mashan transferred the camera, he knew or had reason to know that the BIS license authorizing the export of the camera from the United States to Al-Mashan prohibited the resale, transfer, or reexport of the camera by Al-Mashan to any entity other than those listed on the license as approved end-users without prior U.S. Government authorization. In transferring the camera with such knowledge, Al-Mashan committed one violation of § 764.2(e) of the Regulations.

**D. Penalty Recommendation**

**[REDACTED SECTION]**

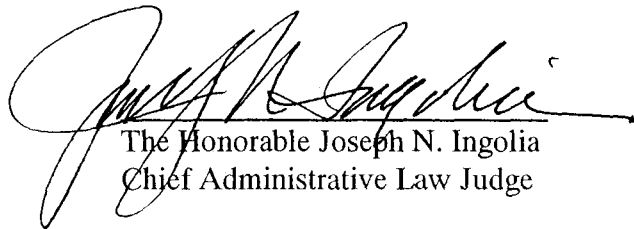


**[REDACTED SECTION]**

**E. Conclusion**

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondent, as provided in § 766.7 of the Regulations.

Within thirty (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).



The Honorable Joseph N. Ingolia  
Chief Administrative Law Judge

Done and Dated August 30<sup>th</sup>, 2006

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

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In the Matter of: )  
)  
Mr. Mohammad Al-Mashan )  
Jleeb Asoukh Commercial Area ) Docket No: 04-BIS-20  
Alwaha Complex, First Floor #1 )  
Safat, Kuwait )  
)  
and )  
)  
P.O. Box 5909 )  
Safat 13060 Kuwait )  
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Respondent )

DECISION AND ORDER

In a charging letter filed on October 25, 2004, the Bureau of Industry and Security (“BIS”) alleged that Respondent, Mr. Mohammad Al-Mashan (“Al-Mashan”), committed two violations of the Export Administration Regulations (“Regulations”)<sup>1</sup>, issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”).<sup>2</sup>

<sup>1</sup> The charged violations occurred from 1999 through 2000. The Regulations governing the violations at issue are found in the 1999 through 2000 versions of the Code of Federal Regulations (15 CFR Parts 730-774 (1999-2000)). Actions taken during this administrative enforcement proceeding are governed by the Regulations in effect at the time such actions take place.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 FR 44,551 (August 7, 2006)), has continued the Regulations in effect under IEEPA.

Specifically, the charging letter alleged that during the period between on or about October 27, 1999 and on or about February 23, 2000, Al-Mashan engaged in conduct prohibited by the Regulations when he transferred an uncooled infrared camera, an item subject to the Regulations and controlled on the Commerce Control List for national security reasons, to an individual from the United Arab Emirates in violation of a BIS license condition. The BIS license that authorized the export of the camera from the United States to Al-Mashan prohibited the resale, transfer, or reexport of the camera to anyone other than the approved end-users on the license without prior authorization by the U.S. Government. In transferring the camera to a non-approved end-user without prior U.S. Government authorization, Al-Mashan committed one violation of Section 764.2(a) of the Regulations.

The charging letter further alleged that during the period on or about October 27, 1999 and on or about February 23, 2000, Al-Mashan transferred an uncooled infrared camera, an item subject to the Regulations and controlled on the Commerce Control List for national security reasons, to an individual from the United Arab Emirates with knowledge, or reason to know, that a violation would subsequently occur in connection with the item. Specifically, at the time Al-Mashan transferred the camera, he knew, or had reason to know, that the BIS license authorizing the export of the camera from the United States to Al-Mashan prohibited the resale, transfer, or reexport of the camera by Al-Mashan to any entity other than those listed on the license as approved end-users without prior U.S. Government authorization. In transferring the camera with such knowledge, Al-Mashan committed one violation of Section 764.2(e) of the Regulations.

In accordance with Section 766.3 of the Regulations, on October 25, 2004, BIS mailed the notice of issuance of the charging letter by registered mail to Al-Mashan at his last known

address. The charging letter was returned to BIS unopened. As stated in the ALJ's Recommended Decision and Order, although service of the notice of issuance of the charging letter by registered mail did not result in actual delivery of the charging letter, MAMG constructively refused delivery of the charging letter when it was served in accordance with Section 766.3 of the Regulations but returned to BIS as undeliverable. To date, Al-Mashan has not filed an answer to the charging letter with the ALJ, as required by the Regulations.

In accordance with Section 766.7 of the Regulations, and because more than thirty days had passed since delivery of the charging letter was constructively refused, BIS filed a Motion for Default Order on July 19, 2006. This Motion for Default Order recommended that Al-Mashan be denied export privileges for a period of ten years. Pursuant to Section 766.7(a) of the Regulations, "[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear," and "on BIS's motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter."

On August 30, 2006, based on the record before him, the ALJ found Al-Mashan to be in default, and he issued a Recommended Decision and Order in which he found that Al-Mashan committed one violation of Section 764.2(a) and one violation of Section 764.2(e) of the Regulations. The ALJ recommended the penalty of denial of Al-Mashan's export privileges for a period of ten years.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations.

I find that the record supports the ALJ's findings of fact and conclusions of law. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations,

the lack of mitigating circumstances, and the importance of preventing future unauthorized exports.

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

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that, for a period of ten (10) years from the date this Order is published in the Federal Register, Mohammad Al-Mashan, Jleeb Asoukh Commercial Area, Alwaha Complex, First Floor #1, Safat, Kuwait and with an address at P.O. Box 5909, Safat 13060 Kuwait ("Al-Mashan"), its successors and assigns, and when acting for or on behalf of Al-Mashan, his representatives, agents, assigns and employees ("Denied Person"), 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. Benefitting 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 the Denied Person and on BIS, and shall be published in the Federal Register. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the Federal Register.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the Federal Register.

Dated: 9-18-06

  
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Mark Foulon  
Acting Under Secretary of Commerce  
for Industry and Security