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# Veteran of Iraq War Now Fights His Own Deportation

By SUSANNAH NESMITH

MIAMI — A veteran of both the Army and the Navy who served with distinction in Iraq and at Guantánamo Bay has spent the last month in federal lockup here because the government wants to deport him.

Not only did he lie on a passport application, prosecutors say, but he was never even a citizen.

But a lawyer for the man, Elisha L. Dawkins, 26, has a different story, one that begins with Mr. Dawkins's arrival here from the Bahamas as an infant. He was raised to believe he was a citizen, his lawyer contends, something the state and federal authorities did not challenge during his seven years in the military.

It is unclear why Mr. Dawkins was indicted in March, five years after receiving his passport and when he was still in the Navy.

“The military believes he's an American citizen,” the lawyer, Clark Mervis, told Judge Cecilia M. Altonaga of Federal District Court here last week, noting that Mr. Dawkins had “secret” security clearance when he served in Guantánamo.

Mr. Dawkins is eligible to become a citizen, based on his military service, but a criminal conviction would disqualify him. Mr. Mervis hopes prosecutors will agree to a pretrial diversion program so he can avoid a conviction.

“We don't often incarcerate war-hero-type people for making a false statement on a passport application,” Mr. Mervis said. “It's a case that should never have been prosecuted criminally. This is just wrong.”

The United States Attorney's Office in Miami declined to comment. The only crime Mr. Dawkins is charged with is lying on a 2006 passport application that asked if he had ever applied for a passport before. He checked no. The government says the answer is yes.

Mr. Dawkins was never denied a passport — in fact, he was inexplicably issued a passport in 2006, in spite of a standing deportation order dating to 1992, when he was 8 years old.

Citing privacy laws, the State Department declined to comment Tuesday on why Mr. Dawkins was issued a passport when he had an open deportation order.

The circumstances of Mr. Dawkins's arrival in the United States are murky, Mr. Mervis said, but Mr. Dawkins believes he was brought here by his mother, who was later deported. He was raised in Miami by relatives who told him he was an American citizen, Mr. Mervis said.

In 2003, after he graduated from high school, Mr. Dawkins enlisted in the Army, using a birth certificate that had been issued by the State of Florida a few months earlier. Because it was issued years after his birth, the certificate is marked "delayed" and notes that Social Security, medical and Miami school records were used to verify that he was born in October 1984; it is unclear where his Social Security number came from.

Jessica Hammond, a spokeswoman for the Florida Department of Health, said supporting documentation was often used to obtain delayed birth certificates.

"All documents are examined by our qualified evidence technicians and are subject to verification with the originating source," she said in an e-mail. "This process has been in place for well over 50 years."

The Army requires two forms of identification to prove citizenship. "If he had a Social Security card and he had a birth certificate and he passed all the other requirements, then he's good to go," said an Army spokesman, Troy Rolan. "If you look at the documentation he has, there's nothing that says he's not a U.S. citizen."

Military records show that Mr. Dawkins was honorably discharged as a specialist in 2008 after receiving the Iraq Campaign medal, Global War on Terrorism medal and Combat Action badge, among other honors. He immediately enlisted in the Navy.

Mr. Rolan noted that the discharge document Mr. Dawkins was given when he left the Army, called a DD214, was all he needed to enlist in the Navy.

"That DD214 suffices for his birth certificate, his citizenship and his high school diploma," Mr. Rolan said. "He can walk right into the Navy and raise his right hand and they'll take him."

Caroline Tetschner, a spokeswoman at Navy Reserves Headquarters, said that the security clearance he needed to serve at Guantánamo was granted because he had already received clearance by the Army. Mr. Rolan, the Army spokesman, said the Army would have checked routinely with the F.B.I., the National Security Agency, local law enforcement and defense investigative services. Citing privacy laws, he could not comment on Mr. Dawkins's security clearance specifically, but said that the Army would discharge someone if a deportation order showed up in a background check.

Military records obtained by his lawyer show that Mr. Dawkins was honorably released from active duty on April 29. He is now a petty officer in the Navy Reserves, the Navy confirmed. Those records show that Mr. Dawkins received glowing evaluations in the Navy and was recommended for early promotion.

In both branches of the military, Mr. Dawkins served as a photographer, taking pictures of his fellow soldiers serving on the front lines in Iraq and of detainees in Guantánamo. His most recent evaluation said he had displayed an “exceptional work ethic” and noted that he was “eager to tell the military story and to further the image and success of U.S. service members.”

Mr. Mervis says he believes that a government database may have picked out Mr. Dawkins’s name, and that the timing of the indictment may have to do with a statute of limitations being set to expire.

Experts on immigration law said that while Mr. Dawkins’s case was unusual, it fit a broader pattern of the government’s pursuing seemingly minor passport violations in an effort to deport illegal immigrants.

“On passports now, they are criminally charging everybody,” said Ira J. Kurzban, a Miami lawyer and past president of the American Immigration Lawyers Association. “They’re even charging people whom they hadn’t charged before.”

Mr. Mervis said Mr. Dawkins was arrested last month in Jacksonville, where he now lives, and has been held at the federal detention center here since.

He added that Mr. Dawkins had completed an associate’s degree in nursing while in the Navy, and that he had been preparing to take a test to become a registered nurse when he was arrested.