

KEYWORD: Foreign Influence; Foreign Preference; Personal Conduct

DIGEST: Applicant has a close relationship with his father and mother, who are citizens and residents of Iran. The evidence establishes that Applicant is vulnerable to Foreign Influence. An additional character letter has now been reviewed and considered. However, the Foreign Influence concerns have not been mitigated. Clearance is denied.

CASENO: 06-04371.h2

DATE: 06/15/2007

DATE: June 15, 2007

In Re:)	
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-----)	ISCR Case No. 06-04371
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION ON REMAND OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

James Krueger, Esq.

SYNOPSIS

Applicant has a close relationship with his father and mother, who are citizens and residents of Iran. The evidence establishes that Applicant is vulnerable to Foreign Influence. An additional character letter has now been reviewed and considered. However, the Foreign Influence concerns have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated November 8, 2006, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, denied or revoked. The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and citizenship of family members, Foreign Preference (Guideline C) concerns related to his exercise of dual citizenship with the United States and Iran, and Personal Conduct (Guideline E) concerns because of alleged falsification of material facts on a SCA.

Applicant filed a notarized response dated December 5, 2006, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

On February 6, 2007, this case was assigned to another Administrative Judge to conduct a hearing and issue a written decision, but it was reassigned to this Administrative Judge on March 6, 2007. A Notice of Hearing was issued to the parties on February 9, 2007, and the hearing was conducted on March 14, 2007.

At the hearing, Department Counsel offered eight documentary exhibits (Exhibits 1 through 8) and no witnesses were called. Applicant, through his attorney, offered two documentary exhibits at the hearing (Exhibits A and B) and offered his own testimony. The record was held open to allow Applicant to submit a copy of Exhibit B, a character letter already admitted into evidence, but with the signature of the author. The transcript (Tr) was received on March 30, 2007.

On May 3, 2007, I issued a written decision denying Applicant's request for a security clearance. On May 15, 2007, Department Counsel filed a Motion for Expedited Remand. On May 16, 2007, Applicant joined in Department Counsel's motion. The Appeal Board issued a Summary Remand on May 29, 2007, requesting further processing of the case. This has now been done.

FINDINGS OF FACT

The SOR contains three allegations, 1.a., through 1.c., under Guideline B, two allegations, 2.a. and 2.b., under Guideline C., and one allegation, 3.a., under Guideline E. Allegation 1.c. was amended at the hearing to indicate that rather than Applicant having three nieces who are residents and citizens of Iran, he actually has two nieces and one nephew who are residents and citizens of Iran. Applicant admitted SOR allegations 1.a., 1.c., 2.a., and 2.b. The admissions are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 45 year old employee of a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. He received a Bachelor's degree and a Master's Degree from United States universities.

Applicant was born in Iran in 1958. He served two years of mandatory military service while in Iran. He came to the United States in 1979, and he became a naturalized United States citizen in 1986. He is married and has two children. His wife was born in the United States and is a United States citizen.

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

Applicant's father and mother are citizens and residents of Iran. His father is 84 and his mother is 79. She has always been a housewife, and he is retired, but had previously worked as a bank manager. Applicant talks to them two to four times a month. He last saw them in 2001, when he met them in Amsterdam and then brought them back to the U. S., where they stayed for two or three months.

Applicant's brother also is a citizen and resident of Iran. Applicant knows that his brother works for the Iranian government, but he does not now in what capacity. He does not call his brother directly, but speaks to him when he has placed a call to his parents' house, and his brother is there. He estimates that he spoke to his brother two to four times in the last year.

Applicant's brother has three children, two daughters and one son, who also are citizens and residents of Iran, but they attend a boarding school in France during the academic year. He communicates with them once every four to six months.

Paragraph 2 (Guideline C - Foreign Preference)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has acted in such a way as to indicate a preference for another country over the United States.

Applicant does not consider himself a dual citizen of Iran and the United States. However, he applied for an Iranian passport which was issued in 1999, even though he was a United States citizen, and he renewed the passport in 2004. He never used his Iranian passport.

Applicant relinquished his Iranian passport to his attorney on March 9, 2007, which he cut up and burned. Exhibit A is a series of pictures showing Applicant's destroyed Iranian passport. While Applicant does not believe that he is a citizen of Iran, he indicated that he would be willing to renounce his Iranian citizenship.

Applicant has not traveled to Iran since 1979.

Paragraph 3 (Guideline E - Personal conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he falsified material facts on a SCA that he executed on December 6, 2005 (Exhibit 1). Question #21 asks, "Have you ever been charged with or convicted of any felony offenses?" Applicant answered "No", and it is the Government's allegation that he should have listed his arrest on July 13, 1983, on three felony charges of Kidnaping, Sexual assault and Criminal Trespass.

At the hearing, Applicant testified that these were false charges brought against him by his girlfriend at the time and her mother for his failure to marry the girlfriend. When the case came to trial, no witnesses appeared against him, so the judge dismissed all charges in the case and refunded the \$1,000 that he had posted for bail. The judge informed him that this would be expunged from his record. Applicant stated that he answered question #21 negatively, because he did not believe he had been charged. I find that Applicant did not knowingly furnish false information to the Government in his SCA, but believed he was answering the question correctly.

Current Status of Iran

Since members of Applicant's family are citizens and residents of Iran, it is relevant to examine the status and the nature of the country. Currently, Iran is considered one of the most dangerous adversaries to the interests of the United States. The U.S. has not had diplomatic relations with Iran since April 7, 1980, following the November 1979 Iranian student occupation of the American Embassy in Tehran and the hostage taking of 52 Americans, which was supported by Ayatollah Ruhollah Khomeini, Iran's leader at the time.

The United States Government's concerns with Iran's policies include, but are not limited to the following: (1) its clandestine efforts to acquire nuclear weapons of mass destruction, (2) its sponsorship of international terrorism, (3) its intervention into the internal affairs of Iraq, (4) its aggressive efforts to undermine the Middle East peace process, and (5) its human rights violation against its own people. As a result of these concerns, the U.S. prohibits most trade with Iran.

Mitigation

Applicant submitted a character letter from an individual, who is a Technical Director for part of the Air Force Research Laboratory, and has known the Applicant for more than two years (Exhibit B). He knows him in both business and social settings. He indicated that Applicant's allegiance to the United States is very strong and he would not do anything to compromise the trust that has been placed in him.

Remand Issue

At the hearing, Applicant offered into evidence a one page character letter on his behalf, dated March 12, 2007, which was unsigned (Exhibit B). At the request of Applicant's counsel, the record was left open, to allow Applicant to submit a copy of the same letter, but with the author's signature included.

Apparently, Applicant's counsel had not only submitted a copy of the March 12, 2007 letter, now signed by the author, but he also offered an additional one page letter, dated March 28, 2007, by the same author. This was not forwarded to me by Department Counsel. Both parties want me to have the opportunity to consider this letter before issuing my final decision.

Since the record was only left open for Applicant to submit a signed copy of Exhibit B, the March 28, 2007 letter, which is a subsequent letter, is technically not admissible. However, since it was not objected to by Department Counsel, I will admit this letter as Exhibit C, and I will consider it in this remand decision.

In his second letter, the Technical Director once again reiterated Applicant's strong attachment to the United States, and he further emphasized that Applicant is "an exceedingly trustworthy person" who will protect classified information "as well as or better than any other US citizen" (Exhibit C).

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2.

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines B, C and E:

(Guideline B - Foreign Influence)

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Based on the evidence of record, the Government has established a reason to deny Applicant a security clearance because of foreign influence. As Applicant's father and mother, with whom he has a close personal relationship, are citizens and residents of Iran, a country which is undisputedly hostile to the Government of the United States, Applicant has a very heavy burden of showing that this family members do not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002).

The Iranian citizenship of members of Applicant's immediate family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001). This, Applicant has not been able to do.

The existence of Applicant's parents and brother, who are citizens and residents of Iran,

comes within Disqualifying Condition (DC) (a), contact with family members, if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. Based on the nature and closeness of the relationship of Applicant with his parents, and the great and continuing threat posed by Iran, I can not find that any Mitigating Conditions (MC) apply . While the strong letters of support in Exhibits B and C reiterate that Applicant is a man of integrity and loyalty, they do not reduce the very significant security threat posed by Applicant's family in Iran.

After considering all of the evidence of record on the issue of Foreign Influence, I conclude that the evidence supporting the SOR substantially outweighs any mitigating evidence.

(Guideline C - Foreign Preference)

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant's application for an Iranian passport, while a United States citizen, must be considered adversely to Applicant and it raises serious Foreign Preference (Guideline C) concerns. However, his destruction of that passport and the fact that he had never used it, considered with his willingness to renounce his Iranian citizenship, must be considered positively for Applicant.

DC (a) (1) and (2) apply because of Applicant possession of his Iranian passport after he became a United States citizen and his Iranian military service. I find that because of Applicant's stated willingness to renounce his Iranian citizenship, MC (b) applies in this case under Guideline C. Also, MC (c) applies because Applicant's military service occurred before Applicant became a U.S. citizen, and MC (e) applies because his Iranian passport, which he never used, has been destroyed. Applicant has mitigated the Guideline C concerns.

(Guideline E - Personal Conduct)

With respect to Guideline E, the evidence establishes that Applicant's there were charges against Applicant but they were dismissed. However, based on his credible testimony that he believed since the case was dismissed and he was told it would be expunged from his record, he believe that the correct answer to question #21 on his SCA was "No."

In reviewing the DC under Guideline E, I conclude that no DC applies. I resolve Guideline E for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline B: AGAINST APPLICANT
Subparagraph 1.a.: Against Applicant
Subparagraph 1.b.: Against Applicant
Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline C: FOR APPLICANT
Subparagraph 2. a.: For Applicant
Subparagraph 2.b.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT
Subparagraph 3. a.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul
Administrative Judge