

DATE: September 2, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23753

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a native-born American citizen. His wife, a naturalized American citizen, is originally from Iran. His mother-in-law and brother-in-law are Iranian citizens of Armenian Christian descent. They still live in Iran. The mother-in-law is a permanent legal resident of the United States and the brother-in-law has been approved for such status. Once the status is approved, both will leave Iran for the United States permanently. They are not connected to the Iranian government and they are not agents of the Iranian government. The Applicant is not in a position to be coerced by any government because of their presence in Iran. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On December 27, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 30, 2003, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on April 9, 2003. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on April 14, 2003, and did not submit any additional information. The case was received by the undersigned on May 27, 2003.

FINDINGS OF FACT

The Applicant is 52, married and has a Bachelor of Science degree. He is employed by a defense contractor, and he seeks to obtain or retain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has members of his immediate family who are not citizens of the United States, currently live in a foreign country, and may be subject to duress or pressure.

The Applicant is a native-born American citizen. His wife is a naturalized American citizen who is originally from Iran. The Applicant's mother-in-law and brother-in-law are Iranian citizens, and still live in Iran. They are not connected in any way with the Iranian government. Concerning his wife's relatives in Iran the Applicant stated in his Answer:

My mother-in-law and brother-in-law are both Armenian Christians who have been trying to immigrate to the United States to join their family and relatives. My wife's family is not culturally connected to Iran. Her family was in Iran because they were forced out of Russia after the Communist revolution because of their religion. They now face the same treatment in Iran which has already caused most Iranians of Armenian descent to have left that country.

The evidence also shows that the Applicant's mother-in-law already has a "green card." This makes her a permanent legal resident of the United States, able to enter the country at will. (Government Exhibit 4 at 4.) In his Answer, the Applicant states that the brother-in-law's application for permanent legal status has recently been approved and is at the United States embassy in Turkey for processing. The Applicant further states that, once the brother-in-law's application is approved, both of them will immediately move permanently to the United States.

In his Answer, the Applicant also showed a clear understanding of his security responsibilities, and evinced a credible intention to fulfill them.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline B (Foreign influence)

Condition that could raise a security concern:

(1) An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

Condition that could mitigate security concerns include:

(1) A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have relatives who are citizens of, and present in, a foreign country which suggests untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant's mother-in-law and brother-in-law are Iranian citizens, and still live in Iran. In reviewing this case I have considered the Government's evidence concerning Iran as a nation of particular interest.

The Applicant, on the other hand, has successfully mitigated the Government's case. There is no evidence that the Applicant's relatives have any connection to the Iranian government. In addition, they are doing all that they can to leave Iran. His mother-in-law is already a lawful permanent resident of the United States. The Applicant showed a clear understanding of his security responsibilities, especially in this vital area. Viewing this case under the whole person concept, and keeping in mind that there are no *per se* rules concerning relatives in particular countries, I find that the

Applicant has met his burden of persuasion.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge