

DATE: August 6, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26993

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's evidence in mitigation has failed to overcome the foreign influence issues triggered by his immediate family members being resident citizens of Iran. However, the Government has failed to demonstrate how Applicant's refusal to bear arms for the United States (US) against Iran falls within any of the disqualifying conditions of the foreign preference guideline. Clearance is denied.

STATEMENT OF CASE

On October 8, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended by Change 4, April 20, 1999, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked. Applicant filed his Answer to the SOR on October 16, 2002, and elected to have his case decided on a written record. The Government submitted the File of Relevant Material (FORM) on March 28, 2003. Applicant received the FORM on April 10, 2003. His response was due 30 days later or by May 10, 2003. No response was received. The case was received by me for decision on May 21, 2003.

FINDINGS OF FACT

The SOR alleges foreign influence (Guideline B) and foreign preference (Guideline C). Applicant admitted subparagraphs 1.a. and 2.a. He denied 1.b., explaining he only provides money to his mother every one or two years. His admissions shall be incorporated in the following factual findings. Applicant is 50-years-old, and has been employed as an audio visual technician for a defense contractor since February 2000. He seeks a secret clearance.

On November 22, 1952, Applicant was born in Iran to resident citizens of the country. At his father's request, Applicant immigrated to the US in January 1978 to continue his studies. After a change in governments in Iran in 1979, Applicant

decided to remain in the US because he enjoyed freedom of religion and choice. He married a US citizen in 1979 and currently has two children.

Applicant's mother, five sisters, and one brother live in Iran. None of his immediate family have ever been employed by the government of Iran. Applicant gives his mother up to \$2,000.00 every five or six months⁽¹⁾ to help her take care of Applicant's handicapped sister. Family friends act as couriers by transferring the money on their return visits to Iran. His mother then exchanges the money without using Iranian banks Applicant does not trust.

Applicant indicated he would support the US against any enemy. He stated, "I would bear arms against any enemy except Iran. In the case of war with Iran, I would be willing to serve the US in any way I could except I would not kill any Iranians." (Item 5)

Before Applicant visited Iran in 1994, he was required to obtain a travel visa by the Iranian government to enter the country. To get the travel visa, Applicant had to disclose his occupation. He indicated he was a cab driver on the travel visa rather than his true occupation because he fears for his safety. Even his family does not actually know where he works or what he does. He finally obtained the Iranian travel visa only after he surrendered his expired Iranian passport that he had received before the present Iranian government came to power in 1979.

Applicant has no business interests, bank accounts, property, or retirement rights in Iran. Applicant's father lost everything after the current government came to power in 1979 because his father would not renounce his religious faith. Applicant has no military obligations or cultural ties in Iran. Applicant provides no financial assistance to any foreign educational organization and sponsors no person in the US.

Applicant's claim he is not vulnerable to any pressure is discredited by his fear for his own safety if he reveals his real occupation to anyone, including members of his family.

POLICIES

Enclosure 2 of the Directive sets forth policy conditions which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent criterion; however, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

Foreign Influence

Disqualifying Conditions (DC):

1. An immediate family member, or a person to whom the individual has close ties or affection or obligation, is a citizen of, or resident or present in, a foreign country;
6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

Mitigating Conditions (MC):

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 US;
4. The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required.

Foreign Preference

Disqualifying Conditions (DC):

9. Performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the US.

Mitigating Conditions (DC):

2. Indicators of possible foreign preference occurred before obtaining US citizenship.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (page 16 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information 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.

The Government must establish all the factual allegations under foreign influence (Guideline B) and foreign preference (Guideline C) that establishes doubt about a person's judgment, reliability and trustworthiness. Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation that demonstrates the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

Under the foreign influence guideline, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the US or may be subject to duress. The circumstances of this case raise security concerns under DC 1 of the foreign influence guideline as Applicant's mother, five sisters, and one brother are immediate family members who are also resident citizens of Iran. Although he disputes the frequency in which he sends his mother money, Applicant still provides up to \$2,000.00 to his mother on a regular basis. Applicant's unexplained reasons for not disclosing his occupation and where he works to his immediate family members also exposes him to DC 6 (conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government).

Under the mitigating conditions of the foreign influence guideline, the security issues raised by the foreign citizenship of Applicant's family members may be mitigated by MC 1 where it can be determined the 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 US. Applicant has indicated none of his immediate family members have ever been employed by the Iranian government. However, that fact alone does not satisfy Applicant's ultimate burden of persuasion in eliminating the risk of foreign influence posed by his immediate family members. Applicant must also demonstrate his mother, sisters, and brother are not in a position to pose a risk they could be exploited by a foreign power. Given the fact Applicant has not told his family what he does and where he works because he fears for his

safety, there is insufficient evidence to confidently conclude that none of them are in a position to force Applicant to choose between his family ties to them and his loyalty to the US.

Actions by an individual indicating a preference for a foreign country over the US raises security concerns under the foreign preference guideline (Guideline C). A citizen of Iran from birth, Applicant has been a US citizen since July 1986. After reviewing the list of disqualifying conditions under the foreign preference guideline, the only two disqualifying conditions pertinent to the circumstances of this case are DC 3 and DC 9. DC 3 is not applicable because Applicant has no military obligation remaining in Iran and there is no evidence he is willing to bear arms for Iran or any foreign country.

The government claims the evidence justifies the application of DC 9 to show Applicant would serve the interest of another government in preference to the interests of the US. However, the plain meaning of "performing or attempting to perform, or otherwise acting" is some kind of action beyond mere words to indicate Applicant desires to serve the interests of the Iranian government in preference to the interests of the US. In sum, Applicant's unwillingness to bear arms for the US against Iran invokes no disqualifying condition when he has no legal duty to do so.

In view of (1) the potential for foreign influence caused by Applicant's immediate family members being residents of Iran, and (2) Applicant's unwillingness to disclose his job to his immediate family members because of fear for his own safety, the Government has established foreign influence under Guideline B. Applicant's unwillingness to bear arms for the US against Iran however, does not constitute foreign preference by Applicant for Iran over the US, particularly because Applicant has no business, bank, property, educational, or political interests in Iran. My decision under both guidelines has also included an examination of the general factors of the whole person concept.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 are:

Paragraph 1. Foreign Influence (Guideline B): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.

Paragraph 2. Foreign Preference (Guideline C): FOR THE APPLICANT.

- a. For the 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.

Paul J. Mason

Administrative Judge

1. In his response to the SOR, Applicant claimed he only sent money every one or two years.