

KEYWORD: Foreign Influence

DIGEST: Applicant's natural mother and sisters are citizens of and reside in Iran. The Applicant is a naturalized citizen who has lived in the US since age 14. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from citizenship and residency of his foreign relatives. Clearance is granted.

CASE NO: 02-02195.h1

DATE: 09/12/2003

DATE: September 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-02195

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

V. Rock Grundman, Esquire

SYNOPSIS

The Applicant's natural mother and sisters are citizens of and reside in Iran. The Applicant is a naturalized citizen who has lived in the US since age 14. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from citizenship and residency of his foreign relatives. Clearance is granted.

STATEMENT OF THE CASE

On January 16, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant stating that DOHA could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ On February 27, 2003, the Applicant answered the SOR and requested a hearing. The case was assigned to me on March 20, 2003. A Notice of Hearing was issued on April 23, 2003, scheduling the hearing, which was held on May 15, 2003.

The Government's case consisted of four exhibits (Gov Ex). The Applicant relied on his own testimony, the testimony of five witnesses, and five exhibits (App Ex). Following the hearing, two additional affidavits were received, provisions having been made for their submission following the hearing. Department Counsel having no objection to their admission, the submissions were admitted as Applicant's exhibit F. The transcript (Tr.) of the hearing was received on May 23, 2003.

FINDINGS OF FACT

The SOR alleges foreign influence (Guideline B). The Applicant admits his mother and two sisters are citizens of and reside in Iran. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 33-years-old, has worked for a defense contractor since January 2001, and is seeking to obtain a security clearance. The Applicant has a positive attitude, is easy to work with, is diligent, and a hard worker who takes his job seriously. His work is of the highest-quality, is technically very strong, has received all positive reviews, and his work performance is in the top 10% of employees. (Tr. 80) His outstanding work has resulted in a special recognition award. (App Ex D) Coworkers would trust him in potential life-threatening situations, and consider him to be honest, loyal, and trustworthy. At work he performs his responsibilities admirably and to perfection which shows his character and integrity. (Tr. 77)

The Applicant was born in Iran. In 1984, the Applicant--then age 14--came to the U.S. to avoid the Iranian military draft. In April 1986, he was legally adopted by his uncle and his uncle's now ex-wife, and his name was legally changed. His uncle--now his adopted father--and his uncle's wife are U.S. citizens. In 1990, the Applicant married a U.S. born citizen and has two children who were born in the U.S. In December 1993 or January 1994, he visited Iran for two or three days. In January 1998, he registered with the U.S. selective service, as required by law. (App Ex C) In January

2000, he became a naturalized US citizen. He received his high school and university education in the U.S.

His father was an architect who wanted to come to the U.S., had petitioned for his green card, and was waiting in Iran for it when he died. (Tr. 42) At the time of the Iranian revolution, his father moved his family out of the capital, Tehran, and moved to a safer town in the North. (Tr. 28) In 1996, the Applicant renewed his Iranian passport so he could attend his father's funeral. In late 1996, the Applicant returned to Iran to bury his father. He has no intention of renewing his Iranian passport, which expired in October 2001.

The Applicant's natural mother and two natural sisters--ages 27 and 15 or 16--live in Iran. His younger sister was born in 1987, which was after the Applicant had come to the U.S. The Applicant is distant from his mother and sisters. He last saw his natural mother and sisters at his father's funeral in 1996. His mother remarried two to three months after his father's death. The Applicant disagreed with her decision to remarry so soon. He told her he did not wish to have any contact with her or those who lived with her. Between 1996 and 2001, the Applicant had no contact with his natural mother. (Tr. 49) In January 2001, when the Applicant completed his SF 86 he had not been in contact with his natural mother or sisters for years. As he completed the SF 86, he was unsure of his natural mother's birthday, where she lived in Iran, her new last name, or her telephone number. (Tr. 30) He does not know his natural mother's new husband's occupation (Tr. 50) and does not know even if his mother is still married. (Tr. 31)

Since 1996, he has not called his natural mother or sisters. Since then, all contact with his natural mother has been initiated by her through telephone, e-mail, letters, or cards. Following the birth of his son in March 2001, his natural mother contacted him concerning the birth of the child. At that time, the Applicant was able to get the telephone numbers and addresses of his natural mother and sisters. He reported this contact with his natural mother to his company's facility security officer (SFO). (Tr. 26) She currently calls him every four to five months to talk about his children. (Tr. 26, 49, App Ex F)

In the 13 years of his marriage his wife has noticed her husband's relationship with his mother and sisters is not close and they seldom speak. Months pass between time when her husband talks with his mother and sisters. (App Ex F)

The Applicant's mother was a housewife, one sister work for a hospital as a computer operator/programmer, and the other sister is a student. None of his family has ever worked for a foreign government. His natural mother and sisters would like to come to the United States. However, since he was adopted he cannot act as a sponsor for them. His sister hopes that the US will liberate Iran as it did Iraq. (Tr. 27) The Applicant does not provide financial assistance to his mother or sisters nor do they provide him support.

The Applicant has no reservations against taking up arms against Iran. He is willing to fight against any country that is

against the United States. (Tr. 33) The Applicant would not give into any foreign pressure. If pressure were exerted against his natural mother and sisters, the Applicant is unwilling to sacrifice the U.S. for their safety. (Tr. 32) He does not like the current Iranian government and has no intentions of traveling to Iran, or returning to live there. (Tr. 25, 52). The security of the U.S. is very important to him. (Tr. 61) Following 9/11, he responded to an FBI advertisement offering his foreign language skills. His manager told him he could take time off to work full-time for the FBI and his job would be waiting for him when he came back. (Tr. 43) He applied to the FBI, but he did not hear back from them.

The Applicant has no financial interest in Iran, expects no inheritance, and should he receive an inheritance he would give it to his sisters. He owns a house in the U.S., has a 401(k) retirement plan, and various bank accounts in the U.S. His family in the United States is most important to him.

The Applicant is very happy living in the United States and being a US citizen.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Influence (Guideline B) The Concern: 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 United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include:

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. E2.A2.1.2.1.

Conditions 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. E2.A2.1.3.1.

3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* 484 U.S. at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the

Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2" The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family and other persons to whom he is bound by affection who are not citizens of the United States, reside in a foreign country, or may be subject to duress. The Applicant's natural mother and two sisters are citizens and residents of Iran. Thus, DC 1-[\(2\)](#) applies.

The Applicant is a naturalized U.S. citizen who has spent his adult life living in the U.S. He has lived here since age 14, received his high school and university education here, is married to a U.S. born citizen who resides in the U.S., is employed in the U.S., owns a home in the U.S., has savings and retirement accounts in the U.S., and his children reside in the U.S. He has no property in Iran and does not expect to inherit any property there. The Applicant has credibly testified he considers himself to be a U.S. citizen, has no reservations against taking up arms against Iran or any other country that is against the United States. He does not like the current Iranian government and has no intentions of traveling to Iran, or returning to live there. The security of the U.S. is very important to him. Following 9/11, he offered his foreign language skills to the FBI. The Applicant would not give into any foreign pressure.

The security concern arises over his natural mother and sisters citizenship and residency in Iran. The Applicant has a heavy burden of persuasion to demonstrate he is not at risk of being vulnerable due to family ties. Although the Government established a *prima facie* case against him, he has nevertheless, successfully mitigated those security concerns. There is no showing his natural mother or sisters are agents of a foreign government, provide him financial assistance, or that he provides them financial assistance. Following the death of his father in 1996, the Applicant had a falling out with his natural mother over her decision to remarry. He told her he did not wish to have any contact with her or those who lived with her. He last saw his natural mother and sisters at his father's funeral in 1996 and has not called them since then. Between 1996 and March 2001, he had no contact with his natural mother or his sisters.

In January 2001, when he completed his SF 86, his contact with his natural mother was such that he did not know where she lived, her telephone number, her husband's occupation, if she was still married, or even her last name. Following the birth of his second child in March 2001, his natural mother contacted him and he was able to get her address and telephone number and those of his sisters so he could provide the information to the SFO. Since March 2001, his natural mother has initiated all contact with him and currently calls him every four to five months to talk about his children. His contact with his sisters is minimal. His youngest sister was not born when he left Iran to live in the U.S. and he has seen her only two or three times.

It is most unusual that contact with an immediate family members such as a mother or sister would be considered "casual." However, because of the falling out that occurred over his mother's remarriage, his adoption, and the limited contact the Applicant has had with his natural mother and two sisters his contact is "casual" irrespective of their family relationship. MC 3-(3) applies.

The security concerns engendered by the foreign citizenship and residence of his natural mother and sisters are mitigated and MC 1-(4) applies. After observing and hearing the Applicant, I am convinced his family members do not represent a credible security risk to this nation and his contact with his natural mother and sisters is an acceptable security risk. I find for the Applicant as to SOR subparagraph 1.a. and 1.b

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Foreign Influence, Guideline B: 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. Clearance granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. DC 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. E2.A2.1.2.1.
3. MC 3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.
4. 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 United States. E2.A2.1.3.1.