

DATE: April 21, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07557

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over foreign influence raised by her husband's family ties in Iran, a country hostile to the U.S. Applicant, who has previously served as an officer in the U.S. military, anticipates she would resist and report any future pressure. Her husband provided similar assurances. Given her history of responsible conduct, I think it improbable that foreign pressure would subject her to duress from her husband's family in Iran with whom she has casual and infrequent contact. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on January 16, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.⁽¹⁾ The SOR alleges specific concerns in paragraph 1 over foreign influence (Guideline B). Applicant replied to the SOR allegations in an Answer notarized on January 24, 2003, and requested a decision be made without a hearing. (Item 2)

The case was assigned to Department Counsel on September 12, 2003, prepared a File of Relevant Material (FORM) with four items that was forwarded to Applicant on September 15, 2003. Applicant received the FORM on September 29, 2003. On October 19, 2003, Applicant submitted a response (Exhibit A) and asked for an extension to submit an additional statement. On October 21, 2003, Department Counsel granted an extension until November 14, 2003. Subsequently, Applicant submitted a statement from her husband dated November 11, 2003. (Exhibit B) Department Counsel stated on November 19, 2003, that the government had no objection to this response.

However, on November 20, 2003, Department Counsel submitted additional evidence and asked that I take Administrative Notice⁽²⁾ of five documents. (Exhibits I - V) Copies were forwarded to Applicant who did not state any objection to this late government submission. The case was assigned to me on December 2, 2003.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 42 years old, began working for a defense contractor (Employer #1) in State #1 in December 1999. In June 2001 she completed a Security Clearance Application (SF 86) and requested a security clearance which she needs for the position. From 1992 to 1999 she worked in State #2. Applicant served in the military from 1983 to 1989. She was granted a Defense Department Secret clearance in June 1985. She was born in the United States (U.S.) in State #2. (Items 2, 4)

Applicant is an engineer with a B.S. degree granted in 1985 from a state university in State #2. In 2001 she reported she had never been married, but was living with a man born in Iran. She evidently subsequently married him, but the evidence submitted does not show the date of their marriage. (Items 2, 4; Exhibits A, B)

Foreign Influence

Applicant's husband left Iran in 1978 and has not returned. He is opposed to the current government in Iran and is not in close contact with his family in Iran. (Exhibits A, B) He became a U.S. citizen in May 1992 and prior to that held permanent resident status. He has infrequent contact with his parents and sisters⁽³⁾ in Iran. He has no financial interests or investments in Iran. He travels extensively in the telecommunications industry and has been asked by the U.S. to consult on technical questions. In a prior job his company had contracts with several U.S. government agencies. (Item 4; Exhibit B) He would report any attempt by a hostile government to influence him or his wife through his family in Iran. In State #2 he was named to the "Top 40 Executives Under 40" list. Another business journal named him to the "Top 100 Influential People" in that area. He was named one of the top fifty Technology CEOs by Scientific American magazine. He holds over ten patents with other patent applications pending. (Item 2; Exhibit B, page two)

Applicant's husband has another sister (born in 1967) and her husband (born 1969) who lived with Applicant in 2001 when she submitted her SF 86, they subsequently moved into their own home in State #1. Applicant and her husband see them twice a month. They have been granted permanent resident status and the sister-in-law has been issued a Green Card. This sister-in-law is a registered nurse and works at a local U.S. hospital. (Items 2, 4; Exhibits A, B)

None of Applicant's husband's family in Iran have ties to the government. His father was an officer in the Shah's army, but retired in 1979; his mother owned a dress shop that has been sold. One sister is married to a businessman; another sister is married to a garage owner. Applicant's husband's mother visits once very five years. Applicant has limited communication with her husband's family as she does not speak Farsi well, and they do not speak English well. (Item 2; Exhibits A, B)

Iran has a hostile⁽⁴⁾ relationship to the U.S. (Exhibits I-V)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline B - Foreign Influence

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: (1) not citizens of the United States or (2) 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.

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;

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;

3. Contact and correspondence with foreign citizens are casual and infrequent;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Influence

The Government raised security concerns under Guideline B over the Applicant's husband's ties to his parents and two sisters who are citizens and residents of Iran. Applicant has mitigated⁽⁵⁾ under MC 1 and 3 the Government's security concerns over possible foreign influence raised by Applicant's husband's familial ties to citizens of a foreign country which has a hostile relationship with the U.S. While born in Iran, her husband has been a naturalized citizen of the U.S. since 1992. Opposed to the current government in Iran, he has never returned to Iran since he left the country in 1978. He has infrequent contact with his elderly parents and two sisters⁽⁶⁾ who reside in and are citizens of Iran. He has substantial business success⁽⁷⁾ in the U.S. and has been a consultant to the U.S. government on technical matters. Applicant herself has casual and infrequent contact with his relatives in Iran. Only Applicant's mother comes to visit in the U.S. once very five years. Applicant has limited communication with her husband's family as she does not speak their language and they have limited knowledge of English.

While I have considered these foreign influence concerns, I conclude Applicant has presented sufficient evidence to meet the very heavy burden⁽⁸⁾ those circumstances present. These security concerns are mitigated by the fact that Applicant has not in the past been subject to pressure. Applicant, who has previously served as an officer in the U.S. military, anticipates she would resist and report any future pressure. Her husband provided similar assurances. Any risk of foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable as her husband's family there have no ties to the government of Iran. The father retired in 1979, the mother is retired, and the sisters are married to business people.

Thus, I conclude that there is no substantial likelihood that her husband's family would be subject to duress and thus exercise foreign influence over Applicant. Given Applicant's history of responsible conduct, I conclude it is highly unlikely that any of the her husband's family members living in Iran would be subject to pressures or create a situation that could result in the compromise of classified information. While acts indicative of foreign influence warrant careful scrutiny, contacts with citizens of other countries are relevant to security determinations only if they make an individual

potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.b. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. I. U.S. Department of State (DOS) Consular Information Sheet Iran, September 8, 2003; II. DOS Background Note: Iran; III. DOS Human Rights; IV. President George W. Bush State of the Union address, January 28, 2003; V. President George W. Bush State of the Union address, January 29, 2002.
3. Not alleged in the SOR is Applicant's husband's youngest sister (born in 1967) and her husband (born 1969) who lived with Applicant in 2001 when she submitted her SF 86, they subsequently moved into their own home in State #1. Applicant and her husband see them twice a month. They have been granted permanent resident status and the sister-in-law has been issued a Green Card. This sister-in-law is a registered nurse and works at a local U.S. hospital. (Items 2, 4; Exhibits A, B)
4. See ISCR Case No. 02-02195 (April 9, 2004) at pp 4-5 where the Board requires a discussion of the Iranian government's hostility toward the U.S. in foreign influence cases. See also ISCR Case No. 02-00318 (February 25, 2004) (footnotes deleted) at pp 6-7: "The Board does not have the authority to make its own pronouncements about the nature of relations between the United States and foreign countries. Pronouncements about the relationship between the United States and any given foreign country are committed to the President of the United States and other duly authorized Executive Branch officials. In ISCR Case No. 02-04786 (June 27, 2003), cited by Department Counsel in its appeal brief, the Board noted that the parties did not dispute that the Iranian government was hostile to the United States, and specifically noted that the U.S. Department of State had made official pronouncements about the nature of the Iranian government. Relying on official pronouncements by the President, the U.S. Department of State, or other authorized federal officials concerning foreign policy and foreign relations matters is *not* the equivalent of the Board making its own determination as to foreign policy and foreign relations matters.
5. **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; 3. Contact and correspondence with foreign citizens are casual and infrequent.

6. No allegations were made in the SOR concerning a third sister who now lives in the US and has been granted permanent resident status.

7. In State #2 Applicant's husband was named to the "Top 40 Executives Under 40" list. Another business journal named him to the "Top 100 Influential People" in that area. He was named one of the top fifty Technology CEOs by *Scientific American* magazine. He holds over ten patents with other patent applications pending. (Item 2; Exhibit B, page two)

8. Since the Government presented evidence of the hostile nature of the relationship between the U.S. and Iran, the Appeal Board in ISCR Case No. 01-26893 issued on October 16, 2002, outlined a standard that when there is hostility between a foreign government and the U.S. this circumstance places "a very heavy burden on Applicant " to show that family ties there do not pose a security risk.