

DATE: February 19, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-08244

## **DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn A. Trowbridge, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a dual citizen of the United States and Iran, has relatives who are citizens and residents of Iran. His brother-in-law was executed by the Iranian government in 1982 for engaging in anti-government student demonstrations, and another brother-in-law, who resides outside Iran, was briefly jailed in 1999 while visiting Iran. Applicant's wife is also a dual citizen of the United States and Iran. Clearance is granted.

### **STATEMENT OF THE CASE**

On September 15, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence) and Guideline C (foreign preference). Applicant submitted a response to the SOR, dated October 10, 2003, and requested a hearing. In his response to the SOR, Applicant denied some allegations contained in the SOR, and admitted others while providing explanations in an effort to extenuate or mitigate the security concern raised by the allegation.

The case was assigned to another administrative judge on November 6, 2003, and reassigned to me on November 21, 2003 due to caseload considerations. A notice of hearing was issued on December 2, 2003, scheduling the hearing for December 16, 2003. <sup>(2)</sup> The hearing was conducted as scheduled. The government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5. GE 1 & 2 were admitted into the record and administrative notice was taken of the information contained in GE 3 & 5 without an objection. Administrative notice was taken of the information contained in GE 4 over Applicant's objection. The Applicant testified, called four witnesses to testify on his behalf, and submitted six documentary exhibits that were marked as Applicant's Exhibits (AE) 1-6. AE 1-5 were admitted into the record without an objection. AE 6 was admitted into the record over the government's objection. The transcript was received January 6, 2004.

### **PROCEDURAL MATTERS**

Before the presentation of evidence commenced, Department Counsel indicated she would move to amend SOR subparagraph 1c. to allege "four

brothers" vis "six brothers" after the evidence was presented. Applicant indicated he did not object to the amendment. I permitted the amendment before presentation of evidence, noting that it would be improper to force the government to proceed to hearing on a knowingly erroneous pleading.

### FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 57-year-old man who is employed by a defense contractor as a circuit design specialist. He has been married to the same woman since July 1977, and has two adult daughters who were born in the United States, one who is married to a United States citizen by birth and the other who still resides with Applicant and his wife. Applicant was previously married for approximately two years, and that marriage ended in divorce around 1976. <sup>(3)</sup>

Applicant was born and raised in Iran. He attended high school in Iran and following graduation served in the pre-revolutionary Iranian military for eighteen months. In approximately 1970 or 1971, Applicant entered the United States on a student visa. He had been provided a scholarship by a United States company that was doing business in Iran to attend school in the United States, but lost that scholarship following the 1979 revolution. He attended several different schools in the United States earning a bachelor of science degree from one university in May 1977, a master of science degree from a second university in June 1979, and a bachelor of science in electrical engineering from a third university in March 1984.

Applicant began working for his present employer in October 1984. He submitted a number of certificates of achievement, congratulations, and other awards that indicate his work performance has been consistently commendable. Applicant has obtained three patents since he began work for his employer, and is due to have a scholarly work published in a professional journal in the near future. He has also authored a novel that he is intending to submit for publication after further review. Applicant has possessed a security clearance for the past nineteen years, and there is no indication there has ever been any action taken to revoke or downgrade that clearance based upon adverse information or that any complaints have been made that allege he mishandled classified material.

Applicant returned to Iran in 1977 for the specific purpose of obtaining a wife. He met his current wife during that visit and returned to Iran a second time in 1977 to arrange the marriage and move her to the United States. They were married on July 29, 1977, and have resided together in the United States since. Applicant owns two houses in the United States, each valued in excess of five hundred thousand dollars. He has resided in the same residence since June 1994. He does not own any property in Iran.

Applicant and his wife became United States citizens in 1984. They retain dual citizenship with Iran. <sup>(4)</sup> Applicant considers himself solely a United States citizen, and a dual citizen only because the Iranian government requires it. Their daughters are United States citizens, who are considered by Iranian authorities to be dual nationals (see fn. 4). Neither daughter has any plans to travel to Iran, although one has not ruled it out as an option.

Applicant's mother, four brothers, and one sister are citizens and residents of Iran. He also has one brother who lives in the United States and another who lives in England. Applicant's mother is 83-years-old. His siblings are all middle-aged. None of his relatives have ever worked for or had any other official connection with the government of Iran. Applicant speaks with his mother by telephone about once every six months. He seldom has any contact with his siblings, the last contact being an e-mail exchange with a brother approximately one year ago. He occasionally speaks with his sister when she is at his mother's house during calls with his mother.

Applicant last traveled to Iran in 1991 to visit his dying father. He used an Iranian passport that was issued to him in 1991 to enter the country because it was required. <sup>(5)</sup> The passport expired in 1995 and has not been renewed. Applicant anticipates traveling to Iran at sometime to see his mother before she dies. He expects that he will be required to obtain an Iranian passport to accomplish that travel, however, if obtaining a passport was prohibited by the United States because of his status as a security clearance holder he would arrange instead to meet his mother in England.

Applicant's wife last traveled to Iran approximately two years ago to visit her dying father. She used an Iranian passport to accomplish that visit. One of Applicant's brothers-in-law was a medical student in Iran who was involved in anti-government protests in the early 1980s. He was arrested and executed by the Iranian government for his involvement in those activities in 1982. One of Applicant's other brothers-in-law, who is a nonresident of Iran, traveled to Iran in approximately 1999, and was briefly jailed by Iranian authorities.

Applicant's witnesses, all of whom are family members, established that he is honest, intelligent, loyal, and apolitical. There is no evidence that would in anyway call into question his undivided loyalty to the United States. He credibly testified that if the Iranian government attempted to bring pressure to bear upon him through his relatives in Iran he would report the effort and do nothing improper to assist Iran.

### POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors

listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, and Guideline C, pertaining to foreign preference, with their respective DC and MC, are most relevant in this case.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(6)</sup> The government has the burden of proving controverted facts.<sup>(7)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>(8)</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>(9)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(10)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(11)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(12)</sup>

No one has a right to a security clearance<sup>(13)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(14)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(15)</sup>

### **CONCLUSIONS**

**Foreign Influence.** 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.

Based upon the allegations in the SOR, Disqualifying Condition (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* must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B:

DC 1 applies in this case because Applicant's mother, sister, and four brothers are citizens and residents of Iran. He has limited or no contact with his siblings, but does speak with his mother by telephone approximately once every six months. His last trip to Iran was to visit his dying father, and he intends to travel to Iran to visit his mother before she dies.

Once the government meets its burden of proving controverted facts<sup>(16)</sup> the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.<sup>(17)</sup> Further, the government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating conditions, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>(18)</sup>

The following information about Iran and its relations with the United States, that was administratively noticed at the government's request, is significant in determining whether a security concern exists under the known facts in this case:

Large-scale demonstrations have taken place in various regions throughout Iran over the past several years as a result of a sometimes volatile political climate. U.S. citizens who travel to Iran despite the Travel Warning against such travel should exercise caution throughout the country. . . .

Iranian security personnel may at times place foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personal possessions in hotel rooms may be searched.<sup>(19)</sup>

The Department of State warns U.S. citizens to consider carefully the risks of travel to Iran. . . . Tensions generated by the current situation in Iraq have increased the potential threat to U.S. citizens and interests abroad posed by those who oppose U.S. policy. Some elements of the Iranian government and population remain hostile to the U.S.. . . U.S. citizens who go to Iran should exercise caution. . . . U.S. citizens of Iranian origin who are considered by Iran to be Iranian citizens have been detained and harassed by Iranian authorities.<sup>(20)</sup>

Iran's support for terrorist groups has long concerned U.S. Administrations, particularly giving Tehran an opportunity to try to obstruct the U.S.-led Middle East peace process. Iran's continued support for terrorism contributed to President Bush's strong criticism of Iran in his 2002 State of the Union message. The State Department report on terrorism for 2002, released April 30, 2002, again stated, as it has for most of the past decade, that Iran "remained the most active state sponsor of terrorism in 2002," although the report attributes the terrorist activity to two hardline institutions: the

Revolutionary Guard and the Intelligence Ministry.

Iran's human rights practices have been a source of concern to recent U.S. Administrations. . . . U.S. and U.N. human rights reports cite Iran for widespread human rights abuses . . . including assassinations and executions of regime opponents. . . . [\(21\)](#)

The following Mitigating Conditions (MC) must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B: MC 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, 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;* and MC 3: *Contact and correspondence with foreign citizens are casual and infrequent.*

There is no evidence to suggest that Applicant's family members are, or ever have been, Iranian agents, so the issue under MC 1 is whether they are in a position to be exploited by Iran. Iran is a country that has been hostile to the United States since the 1979 revolution that overthrew the former pro-western government. However, there is no indication that it has ever attempted to exploit any resident of Iran for the purpose of compromising a security clearance holder within the United States. More specific to the facts of this case, Applicant has been a resident of the United States for more than thirty years, a citizen for twenty years, and a security clearance holder for nineteen years. His Iranian relatives have resided in that country during this time. He has traveled to Iran on three occasions and his wife has traveled there at least once. The best predictor of whether Applicant's relatives are in a position to be exploited in the future is the Iranian government's past conduct. Since Applicant came to the United States in 1971 no action has been taken by the Iranian government to exploit his relationship with relatives in Iran.

Still, the hostility of Iran to the United States places a heavy burden upon Applicant to demonstrate that his family ties with relatives living in Iran do not pose a security risk. [\(22\)](#) To that end he has introduced evidence of his minimal contacts with all relatives, excepting his mother whom he speaks with on the telephone about twice a year and whom he plans on visiting before she dies, either in Iran or in England, if necessary. Further, Applicant sincerely asserts that he would immediately report any attempt to use his Iranian relatives against him. While it is impossible to say with certainty what would actually occur in that event, [\(23\)](#) the assertion is entitled to some consideration, especially in view of Applicant's strong ties to the United States, twenty years of loyal citizenship, and minimal to nonexistent close ties with his Iranian relatives. Considering all the evidence, I find that Applicant has met his burden of showing that MC 1 applies.

As evidenced by his real estate holdings in the United States, Applicant appears to have the financial means to travel to Iran to visit his relatives, including his mother, if he so chose. However, not only has he not chosen to visit them, he seldom even speaks or otherwise communicates with any of his siblings, and has little knowledge of their daily existence. He does speak with his mother by telephone on a regular, though infrequent basis, but has not visited with her since he traveled to Iran to visit with his father prior to his death. Accordingly, I find that Applicant has succeeded in demonstrating that MC 3 applies.

Applicant also receives credit under the "whole person" concept for his twenty years of commendable employment with a major defense contractor, during which he has acquired three patents and is about to have a scholarly work published in a professional journal. He has held a security clearance for nineteen years, without any disciplinary action ever being taken or security violations or concerns being noted. Likewise, his earning three college degrees, stable family life, significant financial acquisitions, effort on having a novel he has written published, and the love and respect he has earned from his family are all indicators of a mature, steady, responsible, and trustworthy individual.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I am satisfied that Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline B is decided for Applicant.

**Foreign Preference.** When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

DC 1: *The exercise of dual citizenship* is one of those acts that demonstrate a foreign preference. Applicant obtained and used an Iranian passport after he became a United States citizen to visit his dying father in 1991. While use of a foreign passport is an exercise of dual citizenship, possession of an Iranian passport is required by Iran (see fn. 5) and recommended by the United States for persons such as Applicant, who are deemed by Iran to remain Iranian citizens. [\(24\)](#)

MC 1: *Dual citizenship is based solely on parents' citizenship or birth in a foreign country;* and MC 3: *Activity is sanctioned by the United States* apply in this case. There is no evidence of any other act demonstrating the exercise of dual citizenship. In fact, all evidence indicates that Applicant is a loyal United States citizen who only allegiance is to

the United States. Therefore, I find that Applicant has successfully met his burden to mitigate the security concern caused by his dual citizenship. Accordingly, Guideline C is decided for Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline B: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

SOR ¶ 1-Guideline C: For the Applicant

Subparagraph a: 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 Applicant. Clearance is granted.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Although written notice was not issued until December 2, 2003, Applicant was contacted by Department Counsel on or before November 21, 2003, and agreed to the scheduled date.
3. Applicant is very uncertain on the dates and even years when events occurred. All dates provided by Applicant prior to his marriage to his current wife should be considered mere approximations. His current wife was able to provided accurate dates for events that occurred subsequent to their marriage.
4. See GE 3: **Dual Nationality**: U.S. citizens who were born in Iran . . .and the children of such persons, are considered Iranian nationals by Iranian authorities. *Consular Information Sheet, Iran, dtd September 8, 2003*
5. See GE 3: **Dual Nationality**: U.S. citizens who were born in Iran . . . .must enter and exit Iran bearing an Iranian passport. *Consular Information Sheet, Iran, dtd September 8, 2003*
6. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
7. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
8. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
9. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
10. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
11. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
12. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

13. *Egan*, 484 U.S. at 528, 531.

14. *Id* at 531.

15. *Egan*, Executive Order 10865, and the Directive.

16. Directive, Additional Procedural Guidance, Item E3.1.14

17. Directive, Additional Procedural Guidance, Item E3.1.15

18. ISCR Case No. 99-0597 (December 13, 2000)

19. GE 3 *Consular Information Sheet, Iran, dtd September 8, 2003*

20. GE 4 *Travel Warning, Iran, dtd May 12, 2003*

21. GE 5 *Congressional research Service Issue Brief for Congress dtd July 25, 2003*

22. ISCR Case No. 01-26893 (October 16, 2002)

23. See ISCR Case No. 99-0511 (December 19, 2000) "statements by an applicant about what he or she will do in the future in response to any attempt to exploit his or her family ties, however sincere or credible, cannot be taken simply at face value. An applicant's stated intention about what he or she might do in the future under some hypothetical set of circumstances is merely a statement of intention that is not entitled to much weight, unless there is record evidence that the applicant has acted in an identical or similar manner in the past under identical or similar circumstances."

24. U.S.-Iranian dual nationals have been denied permission to depart Iran documented as U.S. citizens. To prevent the confiscation of U.S. passports, the Department of State suggests that dual nationals leave their U.S. passports at the nearest U.S. Embassy or Consulate overseas for safekeeping before entering Iran, and use their Iranian passports to enter the country. GE 3 *Consular Information Sheet, Iran, dtd September 8, 2003*