

DATE: May 27, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26982

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

Keith L. Hunt, Esq., and Resa Baniassadi, Esq.

SYNOPSIS

Applicant is 49 years old. He is an electrical engineer working for a defense contractor. Applicant is married with two children, both born in the U.S. Applicant immigrated from Iran in 1975 to attend college. He did not return for 20 years, until 1996 and 1998, to visit his brothers and other family members located there. Applicant obtained and used an Iranian passport on both trips for his own convenience. Applicant did not mitigate the Guideline B Foreign Influence security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 26, 2004, DOHA issued a Statement of Reasons ⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on May 5, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on September 16, 2004. On April 19, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on April 28, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 49 years old, married with two children, and in the process of divorcing his second wife, who is Iranian and has relatives there. His spouse recently became a U. S. citizen. She is a school teacher. She has relatives from Iran currently living in Kuwait. Applicant is an electrical engineer for a defense contractor. He owns his home and several cars, has savings accounts, and a comfortable life in the U.S. Applicant came to the U.S. in 1975 to obtain a college

degree, and became a naturalized U.S. citizen in 1993. He obtained a U.S. passport. Applicant acknowledged on the security clearance application he was a dual U.S.-Iranian citizen, but at the hearing stated he did not consider himself a dual citizen. (Tr. 24-32, 36-38, 57, 65, 74, 79-81, 84-87; Exhibits 1-3, 9, A, H, I)

Applicant did not return to Iran until 1996, and again in 1998 for four weeks, to visit his two brothers, and on the second trip to meet the woman who became his second wife. On the first trip he also visited a cousin, and his aunt and uncle. On those trips he used his Iranian passport that he obtained after he became a naturalized U.S. citizen and had his U.S. passport. Applicant's Iranian passport expired in 2002 and he does not intend to renew it. He had his attorney shred it and submit it as an exhibit as a post-hearing submission. One brother works for the Iranian government-owned oil company as a maintenance man. Applicant is not certain what his other brother does for a living. Several years ago, Applicant is not certain when, the Iran security agency arrested one brother for subversive statements against the Islamic Republic of Iran and its theocratic government. He was held for several days, beaten, and subjected to various psychological pressures to reorient his thinking and force him to cease his anti-government comments and activities. He was released later and returned to work. Applicant has little regular contact with his brothers, having spoken to them only five or six times in the past 30 years. (Tr. 34-36, 41-45, 55, 61-64, 69, 73; Exhibits 1-3, 9, A, H, N)

Applicant's father is deceased, and his mother is a citizen of Iran, but living in the U.S. with one of Applicant's sisters. His mother has one sister living in Iran. Applicant's mother traveled to Iran about four times in the past decade. Applicant has a nephew who wants to go to college in the U.S. and is a citizen of Iran. The nephew recently arrived in the U.S. to attend college. (Tr. 39, 40, 43-45, 60, 61, 77)

In 1998, on his trip to Iran, Applicant was held and questioned by the Iranian security forces as to where he lived and worked, and his income. His U.S. passport was held for over 24 hours by the Iranian authorities. Applicant handed the authorities his Iranian passport when he arrived, but they asked for his U.S. passport because somehow they knew he had one. Applicant was very upset and finally he went to those authorities and obtained the return of his passport. (Tr. 35, 58-60, 66, 70, 71; Exhibit J)

Applicant submitted character references and testimony by a supervisor at work. He also offered character evidence from a worker at his sister's restaurant. Applicant submitted a signed copy of his resident state's loyalty oath to show his loyalty to the U.S. (Tr. 46-49, 68, 88-101; Exhibits K, L, M)

Iran has a very poor human rights record and is hostile to the U.S. government, based on a 25 year record of anti-U.S. policies and activities. Iran is a state sponsor of terrorism. (Exhibits 5 at 4, 6-9)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

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. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct;

(2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

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 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

E2.A2.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant has immediate family members living in and citizens of Iran. His two older brothers work for the Iranian oil company, owned by the Iranian government. His brother's arrest and detention years ago by Iranian internal security forces increases his brother's vulnerability to future coercion, exploitation, or pressure. "Applicant's vulnerability to possible foreign influence through his siblings in Iran is the same whether or not the Iranian government has sought to exert such influence or pressure in the past." (ISCR Case No. 03-16516 at 7 (App. Bd. Nov. 26, 2004). Furthermore, "It is logical that a repressive government would be more likely than a non-repressive government to exploit persons under its control in order to extort cooperation out of a close relative." (ISCR Case No. 03-00526 at 4 App. Bd. Apr. 7, 2005; *see also* ISCR Case No. 02-13595 (App. Bd. May 10, 2005) Of greater importance is the fact Applicant was questioned by the Iranian authorities upon his arrival in Iran for his 1998 visit, and his U.S. passport detained for 24 hours by those authorities. The Iranian government knows Applicant is a U.S. citizen, and what his employment and professional career are. These details make Applicant vulnerable to future coercion, exploitation and pressure by the Iranian government, in addition to his brother's activities and employment. Under these facts, the Disqualifying Conditions

(DC) applicable are DC 1 (*An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen or, or resident or present in, a foreign country. E2.A2.1.2.1*), DC 3 (*Relatives, cohabitants, or associates who are connected with any foreign government. E2.A2.1.2.3*), and DC 6 (*Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. E2.A2.1.2.6*).

The only Mitigating Condition (MC) that might apply would be MC 1 (*family members are not agents of a foreign power or in a position to be exploited by a foreign power in a way to force the Applicant to choose between family loyalty and loyalty to the U.S. E2A2.1.3.1*). This MC is applied in the conjunctive, not the disjunctive mode, such that both conditions must be met to have the MC apply. The Applicant has a heavy burden in those cases involving immediate family members living in a country hostile to the U.S. to show those family ties do not pose a security risk. (ISCR Case No. 02-04786 at 4 (App. Bd. Jun. 27, 2003); also see ISCR Case No. 02-13595, *supra*) Here, Applicant has not met that burden because one brother has already been pressured by the Iranian government and threatened about avoiding future anti-government thoughts and words. Also, Applicant is known to the Iranian government resulting from 1998 questioning and U.S. passport detention. It is reasonable to conclude the Iranian government would have no scruples about applying more pressure to Applicant's family members. The Iranian government has also applied intimidation measures to Applicant when he traveled there by holding him for questioning and retaining his passport for 24 hours. For these reasons, there are no MC applicable here. I conclude Guideline B against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).