

DATE: April 28, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28564

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Gregory M. Murphy, Attorney At Law

SYNOPSIS

Applicant's foreign family ties and other connections have been mitigated, and do not raise a security concern. Clearance is granted.

STATEMENT OF THE CASE

On October 20, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on November 5, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 27, 2004. A notice of hearing was issued on February 3, 2004, scheduling the hearing for March 3, 2004. At the hearing the Government presented three exhibits. The Applicant presented sixteen exhibits and she testified on her own behalf. The official transcript (Tr.) was received on March 15, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 47 years of age. She holds a Ph.D in Electrical Engineering. She is employed as a Project Leader for a defense contractor. She seeks a security clearance in connection with her employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the

compromise of classified information.

The Applicant was born in Iran in 1956. After finishing high school, she came to the United States to attend college. She obtained her bachelor's, master's and doctorate degrees in the field of engineering. In 1985, she became a naturalized United States citizen, and at that time, as far as she was concerned, she renounced her Iranian citizenship. (Tr. p. 34). She also decided that she would make the United States her home. Since moving to the United States, the Applicant has returned to Iran in 1991, on one occasion, to visit her grandmother.

During her graduate studies, the Applicant met her husband, who was also a graduate student and who was a United States citizen. They got married and in 1984 had a baby. The Applicant's parents then came to visit. They liked the United States so much that they decided to move here. The Applicant's parents have lived in the United States since 1987 and they are also United States citizens. In addition, the Applicant has two brothers who both now reside in the United States. One of her brothers is a United States citizen. The other brother obtained her green card in 1998, and was recently sponsored by the Applicant to come to the United States. He plans to apply for United States citizenship when he is eligible. (Tr. p. 35). The Applicant's grandmother moved to the United States and later passed away. None of the Applicant's family members have ever worked for the Iranian Government.

The Applicant is also involved in her local community and appreciates the freedoms and opportunities the United States provides. (See Applicant's Exhibit N). The Applicant owns a home and a rental property in the United States. She also has a retirement account, and checking and savings accounts. She estimates her net worth in the United States at \$1.8 million. (See Applicant's Exhibits J, K and L).

Letters of recommendation submitted on behalf the Applicant by coworkers and other professional colleagues indicate that the Applicant is well respected on the job. She is said to carefully observe all DoD and company security policies, practices, and regulations without compromise. She also possesses superior skills, character and commitment in her profession. She is reliable and trustworthy and recommended for a position of trust. (See Applicant's Exhibits D, E, F, G and H).

The Applicant received the 1995 Society of Women Engineers Achievement Award for outstanding performance in her field of expertise. (See Applicant's Exhibit M).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

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: (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.

Condition that could raise a security concern:

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;

Condition that could mitigate security concerns:

1. A determination that that immediate family member(s), spouse, father, mother, sons daughters, brothers, sisters), cohabitant, or associates(s) in questions 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) and the United States;

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign influence and foreign preference have a direct and negative impact on her suitability for access to classified information.

The Applicant came to the United States as a teenager. Since then, she obtained a doctorate degree, established her family, and made the United States her home. All of her immediate family, including both of her parents and her two brothers, have moved to the United States from Iran. None of her family members have ever been affiliated with, employed for, or agents of, the Iranian Government. Therefore, mitigating condition 1 applies. She has no ties of affection or obligation to anyone in Iran. Thus, she has no foreign ties or contacts that could potentially influence her. Furthermore, the Applicant has no financial interests in Iran, and is worth an estimated 1.8 million dollars in the United States, that includes a house, rental property, bank accounts, and a retirement account. She has severed all of her ties with Iran. Therefore, I find that there is no situation that could create the potential for foreign influence that could result in her compromise of classified information. Accordingly, the Applicant's request for a security clearance must be granted under Guideline B.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge