

DATE: December 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28838

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

David Kindermann, Esq.

SYNOPSIS

Applicant mitigated security concerns relating to his financial obligations when he provided credible evidence that he had initiated and carried out a good faith effort to settle or repay overdue accounts resulting from a business failure in approximately 1997/1998. However, he failed to mitigate security concerns related to his mother's Iranian citizenship and her residency in Iran. 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. Under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) and Guideline B (Foreign Influence) of the Directive. Applicant received the SOR on January 11, 2005, and he answered it in writing on January 26, 2005. He elected to have a hearing before an administrative judge. The case was assigned to me June 13, 2005. On October 3, 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 submitted nine exhibits for admission to the record (Ex.s 1 through 9) and six documents for administrative notice, which were enumerated 10 through 15. The Government's exhibits and documents for administrative notice were admitted to the record without objection. Applicant submitted ten documents for admission to the record. His documents were identified as Exhibits (Ex.) A through J, and were admitted to the record without objection. At the completion of the hearing, I left the record open until October 15, 2005 so that Applicant could submit additional information on his financial obligations if he wished to do so. On October 4, 2005, Applicant submitted a three-page exhibit, which was identified as Applicant's Ex. K, and admitted into evidence without objection. On October 17, 2005, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains seven allegations of disqualifying conduct charged under Guideline F, Financial Considerations, and

one allegation charged under Guideline B, Foreign Influence. In his answer to the SOR, Applicant admitted three and denied four of the allegations under Guideline F. He admitted the one allegation under Guideline B. His admissions are incorporated as findings of fact.

Applicant is a 44-year-old business owner. Since 1999, he has worked as a subcontractor to a management firm that is a government contractor. His subcontract with the government contractor is open-ended and he carries out his work at a federal agency. His business has no other federal contracts. (Tr. 48-49)

Applicant was born in Iran. He left Iran in 1976 at the age of 15 and went with an older brother to study in Great Britain. He completed post-secondary school in Great Britain and enrolled in a civil engineering program at a British university. (Tr. 84-85) From 1982 to 1987, during the time he was a university student, Applicant became active in political groups in Great Britain which opposed the Khomeini regime in Iran. In 1983, as a result of his opposition, Applicant was denied access to funds provided by his family for his education. In 1985, the Islamic Republic of Iran refused to renew Applicant's passport. Applicant feared execution if he returned to Iran. He felt increasingly unsafe in Great Britain. Applicant traveled to the U.S. in 1988. In 1989, he applied for and was granted political asylum in the U.S. (Ex. J) He became a U.S. citizen in 1994. (Ex. 2) He has not returned to Iran since 1979. (Tr. 62)

Applicant has been married since 1983. His wife and her family are ethnic Iranians who are now citizens of the United Kingdom. (Ex. 2.) Applicant and his wife are the parents of three children, all born in the U.S. (Ex. 2; Tr. 75) Applicant's wife is also his business partner and serves as principal owner of their business. (Tr. 86-87)

Applicant's mother is a citizen and resident of Iran. She is 72 years old and in poor health. Applicant's deceased father was an official in the Iranian government under the late Shah. (Tr. 63) Applicant's mother supports herself from rental income derived from properties she owns. (Tr.59-60) Applicant has encouraged his mother to immigrate to the U.S. In August 2004 he received notice that his request that his mother be granted immigrant status has been approved. (Ex. E) Applicant has been advised it may be two years before his mother is issued a visa number and can leave Iran. (Tr. 53-54) Applicant remains close to his mother. He speaks with her on the telephone every two months or so. Applicant's children speak with their grandmother one or two times per month. (Tr. 61)

I take administrative notice of a document entitled "Background Note: Iran," compiled by the Bureau of Near Eastern Affairs, U.S. Department of State, and dated August 2005. (Government document for administrative notice 10, at 6-7.) "Background Note: Iran" states that the U.S. government prohibits most trade with Iran and objects to Iran's support for and involvement with international terrorism, its attempts to acquire nuclear weapons and other weapons of mass destruction, its support for violent opposition to the Middle East peace process; and its negative human rights record.

Applicant has been self-employed since 1991. In 1993, Applicant and his wife focused their business plans on obtaining private and government contract work. Two children were born to Applicant and his wife in 1995 and 1997. Subsequently, Applicant's wife became involved in the care of their children and was unable to work in the business. (Tr. 52-53) Additionally, he was frequently unable to collect final payments from non-government contractors who had employed his company. (Tr. 49-50) In approximately 1997 and 1998, Applicant's business suffered serious losses and he incurred substantial debt. In 1999, Applicant became a subcontractor to a government contractor and over time his income became stable. He elected not to declare bankruptcy, but to repay the debts he owed. As he acquired sufficient income, he began paying off his delinquent accounts. (Tr.50; 52-53)

At his hearing, Applicant denied the debts alleged in ¶¶ 1.a. and 1.b. of the SOR had not been paid as of October 5, 2004. He asserted the two allegations described the same debt. The debt alleged at ¶ 1.b. was a judgment entered against Applicant in March 1999 on a debt alleged at ¶ 1.a. that had been placed for collection in February 1998. Applicant provided evidence to show the judgment was satisfied by payments made in two installments, totaling \$4,326.07. Applicant's documents showed a payment of \$2,000 made in 1999 and a payment of \$ 2,326.07, made in 2003. (Ex. A and Ex. F.)

Applicant provided evidence to show the debt he admitted at ¶1.c of the SOR had been settled for \$3,000.00 on June 15, 2005. (Ex. G.) He provided evidence to show a debt alleged at ¶ 1.d. of the SOR, which he had originally denied and protested, had been settled for \$5,143.99 in June and July 2005. (Ex. H and Ex. K)

Applicant denied a judgment debt of \$6, 830.65, alleged in ¶ 1.e. of the SOR as unpaid as of October 5, 2004. He presented evidence to show the judgment had been paid in full in the amount of \$5,131.72 in October 2003. (Ex. C.)

Applicant admitted a debt alleged in ¶ 1.g. of the SOR as unpaid as of October 5, 2004. The SOR alleged the debt was for \$42,169. Applicant described the debt as a business line of credit. He presented evidence to show the debt had been settled for \$6,000 in February 2005. (Ex. I.)

Applicant admitted a debt to a credit card company, but he disputed the amount of the debt. The SOR alleged in ¶ 1. f. that Applicant owed a judgment debt totaling \$14,449.93. Applicant presented evidence to show the debt amounted to \$11,563.03, that he had paid \$3,200 on the debt, and still owed \$8,363.03 in June 2004. Applicant, through counsel, currently disputes the amount remaining to be paid on the debt and is seeking an opportunity to settle. (Tr. 50-51; Tr. 68-70; Ex. D.)

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 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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. *See Egan*, 484 U.S. at 531. 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. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

Guideline F - Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Directive ¶ E2.A6.1.1. Applicant has a history of not meeting his financial obligations, suggesting an unwillingness or inability to satisfy his debts. These conditions raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged the following financial delinquencies: that Applicant owed approximately \$1,878.00 to a bank, that the debt had been placed for collection in about February 1998, and that as of October 4, 2004, the debt had not been satisfied (¶ 1.a.); that he owed the bank identified in allegation ¶ 1.a. approximately \$4,171.00 on a judgment debt entered against him in March 1999, and that as of October 5, 2004, the judgment debt had not been satisfied (¶ 1.b.); that he owed approximately \$15,499.00 on a delinquent account placed for collection in May 1999, and that as of October 5, 2004, the debt had not been satisfied (¶ 1.c.); that he owed a creditor approximately \$7,348.55 on an account charged off as a bad debt on September 22, 1999, and that as of October 4, 2004, the debt had not been satisfied (¶ 1.d.); that he owed approximately \$6,830.65 on a judgment debt entered against him on August 9, 2000, and that as of October 5, 2004, the debt had not been satisfied (¶ 1.e.); that he owed approximately \$14,449.93 on a judgment debt entered against him on August 9, 2001, and that as of October 5, 2004, the judgment debt had not been satisfied (¶ 1.f.); and that he owed approximately \$42,169.00 on an account that had been referred to collection in March 2003, and that as of October 5, 2004, the debt had not been satisfied (¶ 1.g.).

In his answer to the SOR, Applicant admitted three of the seven unsatisfied delinquencies identified in the SOR, specifically the allegations at ¶¶ 1.c, 1.f., and 1.g. He denied the allegations at ¶¶ 1.a., 1.b., 1.d., and 1.e. of the SOR. In his answer to the SOR, his testimony at his hearing, and the documents he submitted, it became clear that Applicant did not dispute the existence of the financial delinquencies alleged, but, rather, disagreed with the amounts and payment dates specified for individual delinquencies.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve debts which remained unpaid or unsettled for several years. Some of his delinquencies dated to 1998 and 1999. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A.6.1.3.2. applies. If a person's financial delinquencies were largely caused by conditions beyond his control, then mitigating condition E2.A.6.1.3.3 might apply. Applicant's business suffered serious losses in approximately 1997 and 1998, when his wife and business partner left the business to care for their two young children and Applicant was unable to collect final payments from some of his clients. In 1999, Applicant took on his present duties as a subcontractor to a government contractor, and he has had a reliable income since that time.

The record shows that Applicant's financial delinquencies are related to the period when his business foundered. The conditions that gave rise to Applicant's business losses were largely beyond his control. Accordingly, I find that mitigating condition E2.A.6.1.3.3. applies to Applicant's case.

If the evidence demonstrates an individual initiated a good faith effort to repay overdue creditors or otherwise resolve his debts, then mitigating condition E2.A.6.1.3.6. might apply to his case. The evidence shows that, after regaining his financial equilibrium, Applicant chose not to declare bankruptcy. He committed himself to paying or settling his delinquent debts. At his hearing, Applicant presented credible evidence to show that the debt alleged in ¶ 1.a. of the SOR was the same debt identified as a judgment debt in ¶ 1.b. and that he had paid the judgment in full in two payments, one in 1999 and one in 2003. Additionally, he presented credible evidence to show he had settled the debt alleged in ¶ 1.c of the SOR for \$3,000 on June 15, 2005; that he had settled the debt alleged in ¶ 1.d. of the SOR for \$5,143.99 in June and July 2005; that he had paid in full the judgment alleged in ¶ 1.e. of the SOR in October 2003; and that he had settled the debt alleged at ¶ 1.g. of the SOR for \$6,000 in February 2005. Applicant also presented credible evidence showing he had disputed the amount of the debt alleged at ¶ 1.f. of the SOR, had paid a portion of the debt, and was seeking, through counsel, to identify and settle the actual amount of the remaining debt. I conclude that mitigating condition E2.A.6.1.3.6. applies to Applicant's case.

Accordingly, the allegations in ¶¶ 1.a. through 1.g. of the SOR are concluded for the Applicant.

Guideline B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's mother was a citizen and resident of Iran (¶ 2.a.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United

States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the government of Iran has declared itself hostile to the United States by supporting international terrorism, seeking to acquire nuclear weapons and weapons of mass destruction, and by opposing, through violence, U. S. policies such as the Middle East peace process and human rights. These hostile actions by Iran directly threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of Iran could be vulnerable to coercion, exploitation, or pressure.

Applicant admits his mother, who is elderly and in poor health, is a citizen and resident of Iran. His admission raises a security concern under Guideline B, DC E2.A2.1.2.1. Applicant's mother's Iranian citizenship and residency in Iran could make Applicant vulnerable to coercion, exploitation, or pressure by a hostile foreign government.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the United States. MC E2.A2.1.3.1. While the evidence does not establish that Applicant's mother is an agent of a foreign power, she is a citizen of a totalitarian state with interests antithetical to the United States, and she could be exploited by the government of Iran in a way that could force Applicant to choose between loyalty to her and the United States. (ISCR Case No. 02-13595, at 4-5 (App. Bd. May 10, 2005) Accordingly, MC E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant's relationship with his mother, who is a citizen and resident of Iran, is based on ties of familial affection or obligation. He and his family are in frequent contact with his mother, and those contacts are not casual. Accordingly, mitigating condition E2.A2.1.3.3. does not apply to Applicant's relationships with his mother.

Nothing in Applicant's testimony suggested he was not a loyal American citizen and a credit to his adopted country. However, he was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, the allegation in subparagraph 2.a. of the SOR is concluded against the Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: 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.

Joan Caton Anthony

Administrative Judge

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