

DATE: November 24, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30587

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 35-year-old naturalized citizen of the United States, employed by a defense contractor since 1996. Applicant was born in Iran, but escaped in 1987. Applicant has lived in the United States since 1989, and became a U.S. citizen in 1995. Applicant's parents have become U.S. citizens. His parents and his extended family members all reside in the United States, except a brother who lives with his wife and children in Iran. Additionally, Applicant had a romantic relationship with a Russian woman for about three years, until 2002. He visited her in Russia three times. They remain friends and keep in contact by telephone and e-mail. Applicant has not mitigated the security concerns arising from his brother in Iran or his close relationship with a citizen and resident of Russia. Clearance is denied.

**STATEMENT OF THE CASE**

On February 18, 2002, Applicant submitted an application for a security clearance. Under Executive Order 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 (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On January 23, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, Guideline B, Foreign Influence, and Guideline C, Foreign Preference.

Applicant answered the SOR in writing on March 10, 2004. He elected to have a hearing before an administrative judge.

The case was originally assigned to another administrative judge, but was reassigned to me on August 11, 2004. With the concurrence of the parties, I conducted the hearing on September 15, 2004. The government introduced four exhibits, Applicant presented Exhibits A through E, and testified on his own behalf. DOHA received the transcript on September 29, 2004. I granted Applicant's request for additional time to submit matters until October 13, 2004. Thereafter, Applicant submitted, without objection, documents admitted as Exhibits F through O, inclusive.

## FINDINGS OF FACT

Applicant admitted the factual allegations in the SOR, with explanations. Applicant's Answer to SOR, dated March 10, 2004, at 1-2. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 35 years old. Ex. 1 at 1. He was born in Iran. *Id.* He indicated his family belongs to an ethnic group and a religious faith which are oppressed in Iran. Ex. 2 at 3; Tr. at 16. Applicant escaped from Iran in 1987 when he was 18 years old and sought asylum in the United States. Tr. at 17. He spent about 18 months in a refugee camp in Europe before being admitted to the United States in 1989. *Id.*; Ex. 2 at 2. Applicant's relatives sponsored him into the United States. Tr. at 17. Applicant believes he could be punished if he went back to Iran. Tr. at 27.

In about 1993, Applicant applied for and obtained an Iranian identity card. Ex. 2 at 4; Ex. H. Applicant asserts the card was of limited value and he never used it for any purpose. Ex. 2 at 4. He believed that he might be able to use the Iranian identity card to obtain an Iranian passport, should he ever desire to return to Iran. *Id.* He claimed his parents urged him to obtain the identity card, because he had no passport or other documentation from any country at that time. Tr. at 19. Applicant has never applied for or held an Iranian passport. Ex. 2 at 3. Applicant destroyed the identity card. Exs. I, J, K, L, and M.

Applicant graduated from college in the United States in June 1995 with a bachelor of science degree. Ex. 2 at 3. He became a naturalized citizen of the United States in September 1995. Ex. 2. at 3.

Applicant has worked for the same defense contractor since 1996. *Id.* Applicant's supervisors praise his judgment, job performance, trustworthiness, and integrity. Exs. N, O.

Applicant's parents immigrated to the United States in 1997. Ex. 2 at 1. Applicant sponsored their entry into the United States. Ex. 2 at 5. His father became a naturalized citizen of the United States in January, 2003. Applicant's Answer to SOR, *supra*, at 1; Ex. A. Applicant's mother became a citizen of the United States in May, 2004. Ex. F, G. Applicant's parents do not work outside the home. Ex. 2 at 1. They received support from Applicant and his brother for some time, but at present only Applicant provides financial support to his parents. Applicant's Answer to SOR, *supra*, at 1. Applicant's parents traveled back and forth between the United States and Iran between 1997 and 2001 to visit their son. *Id.* at 2. Applicant's father has not returned to Iran since 2001. Applicant's Answer to SOR, *supra*, at 1. His mother has returned once, to finalize their permanent move to the United States. *Id.*

Applicant has a brother who still lives in Iran. Ex. 2 at 2. His brother is 39 years old, and married. Tr. at 25. Applicant's brother operates a machine shop providing commercial automotive services. Tr. at 15. He got the business from Applicant's father. Ex. 2 at 1. Applicant's brother served in the Iranian military for about two years in the late 1980s, because military service is compulsory in Iran. Tr. at 26. Applicant is unsure of his brother's rank, duties, or position in the military. *Id.* Applicant maintains contact with his brother in Iran. He generally communicates with him at least once a month, by telephone or e-mail. Tr. at 25. Applicant last met his brother during a ski trip to Austria in 1997. Ex. 2 at 2. Applicant reports there have been no attempts to coerce or pressure his brother since Applicant left Iran in 1989. Tr. at 36.

Applicant has no financial interests in Iran. Ex. 2 at 4. He has substantial financial assets in the United States, including real property, automobiles, financial deposits, and bank deposits. Tr. at 29. Applicant feels strongly about his obligation to support his parents, who are U.S. citizens residing in this country. Applicant's Answer to SOR, *supra*, at 1. In addition to his parents, Applicant has many relatives in the United States. Tr. at 37.

Applicant's job requires him to travel to various locations, both in and out of the United States, for prolonged periods to work on various projects. Ex. 1 at 1-2, 6. In 1998, while staying in Russia for a joint business venture between his employer and a Russian firm (Exs. C, D), Applicant met a Russian woman who worked at the same location. Ex. 2 at 6-7. They developed a romantic relationship which lasted from 1999 to 2002. Applicant's Answer to SOR, *supra*, at 1. Applicant's girlfriend stayed with him in his home in the United States for about nine months in 1999, then returned to Russia. Ex. 2 at 7. After that time, Applicant kept in frequent contact through e-mail (*id.* at 9) and met her in Europe or Russia for vacations or during business trips. *Id.* at 7-8; Tr. at 32-34. At the time Applicant submitted his security

clearance application, he was considering marrying her. Ex. 2 at 8. However, the relationship was terminated amicably during Applicant's visit to Moscow during Christmas, 2002. Applicant's Answer to SOR, *supra*, at 1; Tr. at 30. Applicant maintains contact with her by telephone and e-mail. Tr. at 30.

## POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

**Guideline B, Foreign Influence:** A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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. Directive, ¶ E2.A2.1.1.

**Guideline C, 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. Directive, ¶ E2.A3.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"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." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 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.

The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

### **Guideline B, Foreign Influence.**

The Government's documentary matters and Applicant's admissions constitute substantial evidence of a disqualifying condition under Guideline B of the Directive. Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if, "[a]n 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." Applicant's brother is a citizen of Iran, and lives there permanently with his family. Also, Applicant has a close friend who is a citizen of Russia. These situations could create the potential for foreign influence.

These security concerns can be mitigated where it is determined that "*the immediate family member(s) . . . 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 persons(s) involved and the United States.*" Directive, ¶ E2.A2.1.3.1.

Applicant's brother runs a family-owned machine shop in Iran, specializing in commercial automotive services. Although he completed his compulsory military service, he has no continuing connection with the Iranian military or government. I conclude Applicant's brother is not an agent of a foreign power. *See* 50 U.S.C. § 1801(b).

In assessing whether relatives are vulnerable to exploitation by a foreign power, it is necessary to consider several factors, including the character of the government of the foreign country concerned. Iran is an Islamic Republic, ruled by members of the clergy. Ex. 3 at 4, 6. The United States broke diplomatic relations with Iran in 1980. Ex. 3 at 6. The United States objects to Iran's efforts to acquire nuclear weapons, its support for international terrorism, its support for violent opposition to the peace process in the Middle East, and its poor human rights record. *Id.* The United States restricts trade with Iran. *Id.* Considering Iran's record of serious human rights violations and its role as a major sponsor of international terrorism (Ex. 3 at 4), it is not unlikely that Iran would attempt to force or coerce a resident or citizen to act adversely to the interests of the United States.

It is also important to consider the vulnerability of Applicant's brother in Iran. Applicant's brother is not an employee of the government of Iran, or otherwise directly under the control of the government. However, Applicant's brother and his family are vulnerable because they are physically located in Iran. As citizens of that country, they may not be able to leave freely. Furthermore, Applicant indicated that his family belonged to both an ethnic group and a religion which are minorities in Iran, and which have been oppressed for many years. Under all the circumstances, I conclude Applicant's brother is vulnerable to pressure or coercion from the government of Iran.

Another significant factor is Applicant's vulnerability to pressure or coercion exerted through his brother in Iran. Applicant has deep ties of affection and obligation to his brother and his brother's family. He maintains regular contact with his brother. Undoubtedly, his parents, whom Applicant reveres, are also concerned for the safety and well-being of their son in Iran and his family. At the same time, he has extensive familial ties to the United States; his parents and members of his extended family are citizens of the United States and reside in this country. He also has substantial financial interests in this country, including real estate, retirement funds, and bank accounts. He has worked for the defense contractor for many years, and established a significant professional standing with that firm. Applicant is potentially vulnerable to adverse influence exerted through his brother.

The same analysis applies to Applicant's close relationship with his former fiancée, a citizen and resident of Russia. The United States and Russia are developing better relations since the end of the Cold War. Nonetheless, Russia is still a significant concern regarding industrial intelligence-gathering activities.

Applicant's girlfriend is vulnerable to pressure or improper influence. She is a citizen and resident of Russia. Although not an employee of the Russian military forces or the government, she was employed by a Russian firm working in the aerospace industry. She now works for a Danish transportation company with offices in Russia. Ex. 2 at 6.

Finally, I considered Applicant's susceptibility to duress, coercion or improper influence as a result of pressure exerted upon his female friend in Russia. Obviously, their relationship was once very close-at the time he submitted his security clearance application, Applicant considered marrying her. She came to the United States and lived with Applicant for nine months, and they met in Europe and Russia on several occasions. Although they have since broken off their romantic engagement, they remain friends and stay in contact by telephone and e-mail on a sporadic but relatively frequent basis. I find Applicant has an enduring emotional attachment to his Russian girl friend that makes him potentially vulnerable to exploitation by a foreign government.

I considered all the circumstances in light of the "whole person" concept. I conclude Applicant has not mitigated the security concerns that arise because his brother is a citizen and resident of Iran, and he has close ties of affection to a woman who is a citizen and resident of Russia.

The SOR also includes allegations concerning Applicant's parents. Paragraph 1.c alleges Applicant "*sponsored the entry of your mother and father, citizens of Iran, into the United States.*" Applicant admitted serving as the sponsor for his parents' immigration to the United States. Since then, they have both become citizens and permanent residents of the United States. Applicant's sponsorship of his parents is evidence of the closeness of their relationship and is another compelling interest linking Applicant to this country. I conclude that Applicant's sponsorship of his parents as immigrants to this country does not raise a security concern.

The SOR, ¶ 1.d, also alleges "*your mother and father currently reside in the United States and they travel back and forth between the United States and Iran.*" Applicant admitted the allegation was true, but noted that his parents did not travel to Iran as frequently now as they once did. The available evidence indicates that after moving to this country in 1997, Applicant's parents traveled between the United States and Iran to visit their son on several occasions. However, the trips are less frequent now. Applicant's father has not visited Iran since the summer of 2001, and his mother visited only once to finalize their permanent move to the United States. Applicant's Answer to the SOR, *supra*, at 1. Considering that both parents are now United States citizens permanently residing in the United States, and that any plans to visit Iran again are speculative, I conclude this does not raise a security concern.

Paragraph 1.e of the SOR alleges Applicant and his brother in Iran provide financial support to Applicant's father. Applicant admitted this was true at one time, but now indicates that Applicant alone provides financial support for his parents. This evidence demonstrates the closeness of the relationship between Applicant and his parents. Now that Applicant's parents are citizens and residents of the United States, this does not raise security concerns.

Paragraph 1.g of the SOR alleges Applicant "*traveled to Russia in 2001, twice in 2000, and in 1998.*" Applicant admitted the allegation. He explained that he made trips to Russia in 1998 and 2000 for business. He also indicated he visited Russia in 2000, 2001, and 2002 to visit his girlfriend. Managers acknowledge Applicant was in Russia on business in 1998 and 2000. Exs. C, D. As discussed above, Applicant terminated his romantic relationship with his female friend in Russia. At present, he has no plans to go back to Russia. Tr. at 35. Under all the circumstances, I conclude Applicant's previous trips to Russia do not raise security concerns.

### **Guideline C, Foreign Preference.**

Under ¶ E2.A3.1.2.1 of the Directive, the "*exercise of dual citizenship*" may be disqualifying. Here, Applicant obtained an Iranian identification card in 1993, believing that it might make it easier for him to obtain an Iranian passport later. Applicant's entitlement to an Iranian identification card is an incident of citizenship, and exercising that right raises a potentially disqualifying security concern.

Under the Directive, that security concern may be mitigated under certain circumstances. Paragraph E2.A3.1.3.1 provides that it may be mitigating where "*[d]ual citizenship is based solely on parent's citizenship or birth in a foreign country.*" Applicant considers himself solely a citizen of the United States-he renounces Iranian citizenship. *See* Directive, ¶ E2.A3.1.3.4 ("*Individual has expressed a willingness to renounce dual citizenship*"). Iran considers him a citizen of that country because he was born there. Ex. 4. Applicant never served in the Iranian military, never voted in an Iranian election, and never held an Iranian passport.

Applicant obtained the Iranian identification card (Ex. H) while in the United States only to have some documentation

of his nationality. This was necessary because he escaped from Iran without ever having an Iranian passport. Moreover, Applicant got the Iranian identification card before he became a U.S. citizen. *See* Directive, ¶ E2.A3.1.3.2 (*Indicators of possible foreign preference occurred before obtaining United States citizenship*). Lacking a formal procedure for surrendering the Iranian identification card, Applicant destroyed the card. *See* Exhibits I, J, K, L, and M.

I considered carefully all the facts and circumstances in this case. I find the mitigating conditions discussed above apply in this case. I conclude Applicant has mitigated the security concerns arising from obtaining an Iranian identification card in 1993.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: For Applicant

Paragraph 2, Guideline C: FOR APPLICANT

Subparagraph 2.a: For 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.

Michael J. Breslin

Administrative Judge