

KEYWORD: Foreign Influence

DIGEST: Applicant is unable to successfully mitigate the foreign influence security concern based on his family ties to Iran. Clearance is denied.

CASENO: 02-30772.h1

DATE: 02/07/2005

DATE: February 7, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30772

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Jason R. Perry, Esq., Department Counsel

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the foreign influence security concern based on his family ties to Iran. Clearance is denied.

STATEMENT OF THE CASE

On April 16, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B for foreign influence. In his Answer to the SOR, dated May 8, 2004, Applicant admitted, with explanation, to the factual allegations in the SOR; he also requested a hearing.

Department Counsel indicated he was ready to proceed on July 19, 2004, and the case was assigned to me the same day. A notice of hearing was issued August 3, 2004, scheduling the hearing for August 25, 2004. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript September 2, 2004. Issuing a decision in this case was delayed due to a heavy caseload.

RULINGS ON PROCEDURE

Without objections, SOR subparagraph 1.f was amended to conform to the record evidence as follows: "You traveled to Iran in 2002."

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the record, I make the following essential findings of fact:

Applicant is a 43-year-old married man who was born in Iran to Iranian parents in 1961. He became a naturalized U.S. citizen in 2000. He is seeking to obtain a security clearance, for the first time, in conjunction with his employment.

Applicant is employed as a project manager for a large information technology services company, and he has worked for this company since February 2000. As project manager, Applicant manages and supervises a number of technicians who are installing and configuring an Intranet system on a large military installation. Concerning Applicant's work performance, a co-worker of two years testified as a character witness endorsing Applicant's application for a security clearance. The co-worker described Applicant as a dedicated, hardworking employee with good management skills.

In addition to his full-time job, Applicant works part-time as a freelance photographer. In this capacity, he has been assigned to take photographs at high-level political events where he was required to submit to a background check to obtain press credentials (Exhibit A), to which he was never denied. Indeed, by all appearances, Applicant is a law-abiding citizen of the U.S.

Applicant was raised and educated in Iran. He earned two bachelor's degrees from Iranian universities, the first in photography and film production, the second in history and political science.

Applicant was never employed in Iran, and in 1989, he immigrated to the U.S. Applicant has furthered his formal education in the U.S., as evidenced by being awarded a certificate in 1999 and a master's degree in 2003.

Applicant married his wife, a native-born Iranian citizen, in November 1989. The wedding took place in Iran. Applicant returned to the U.S. after the wedding and filed the necessary immigration paperwork for his wife to immigrate to the U.S. She entered the U.S. in 1994, and she obtained U.S. citizenship in 2000. His spouse also holds a master's degree from an Iranian university, and she has plans to enroll in a Ph.D. program in education. Applicant and his wife have two children, both native-born Iranian citizens who have since obtained U.S. citizenship. One of the children, a daughter, is disabled.

Applicant's mother and father are both citizens of and residents in the U.S. His mother recently obtained her U.S. citizenship in July 2003. His father has been a U.S. citizen since 1999. Also, Applicant has an older brother and a younger sister who are citizens of and residents in the U.S.

Applicant's older sister is a citizen of and a resident in Iran. She is married to an Iranian citizen. The sister is a housewife and her husband runs a small import-export business. Neither have been employed by the Iranian government. Applicant has monthly contact with his sister, usually by telephone. Applicant does not provide any financial assistance to this sister. Applicant's father has filed the necessary immigration paperwork for this sister to immigrate to the U.S. (Exhibit B). The immigration petition is still in process, and Applicant does not know when his sister will be allowed to immigrate to the U.S.

Applicant's mother-in-law and father-in-law are citizens of and residents in Iran. Both are in the 70s and retired. Previously, the father-in-law ran a small household appliance business and the mother-in-law ran the household. Applicant's wife speaks to her parents in Iran approximately once a month, and she has visited them in Iran since coming to the U.S.

Within the last seven years or so, Applicant has made two trips to Iran for family visits. His wife and children went with him on both trips. The first trip was in 1998, and the second trip was in 2002. He experienced no problems or difficulties with Iranian officials or authorities during these trips. Applicant has no plans to travel to Iran at this time.

Administrative or official notice was taken of the certain facts concerning Iran as specified by Department Counsel in Exhibit 4, with reference to Exhibits 5, 6, 7, and 8. Three areas are highlighted as follows:

- Iran is hostile to the interests of the U.S. and it continues to be one of seven countries the U.S. State Department has designated as a state sponsor of terrorism.
- Iran is making efforts to acquire weapons of mass destruction.
- Iran has a poor record of human rights and the government continues to commit numerous and serious abuses, including summary executions, torture and other degrading treatment of prisoners, arbitrary arrest and detention, and violence against women.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility,

including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on 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.

BURDEN OF PROOF

The only 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.⁽²⁾ There is no presumption in favor of granting or continuing access to classified information.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁵⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁸⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline B for foreign influence, a security concern 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 U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. In addition, common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service.

Here, based on the record as a whole, the government established its case under Guideline B. Applicant has close family

ties to Iran, as evidenced by his sister and parents-in-law who are citizens of and residents in Iran. The strength of the ties is also demonstrated by traveling to Iran for family visits. These circumstances raise a security concern under DC 1. (11)

I have reviewed the mitigating conditions under Guideline B and conclude none apply. The only MC deserving serious consideration is MC 1, (12) but it does not apply. It appears that none of the family members in Iran are agents of the Iranian government or any other foreign power. (13) But that does not end the analysis, as Applicant must show his family members in Iran are not in position to be exploited by the Iranian government.

In deciding if an applicant has met the second prong of MC 1, it is proper to consider how the foreign country at issue is governed. The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes it is nonsensical to treat North Korea as if it were Norway. Here, we know Iran is hostile to the U.S. and is ruled by a government with a poor record of human rights. We also know Iran is making efforts to acquire weapons of mass destruction, and it is a state sponsor of terrorism. Given these circumstances--which are clearly beyond Applicant's control--the presence of Applicant's sister and parents-in-law in Iran places them at risk of being brought under control or used as a hostage by an Iranian intelligence or security service. Unfortunately, his sister and parents-in-law are in a position where there is a potential for them to be exploited in a way that could force him to choose between loyalty to his family members and the interests of the U.S. Accordingly, Applicant is unable to successfully mitigate the security concern, and Guideline B is decided against him.

To conclude, Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. But this decision should not be construed as an indictment of Applicant's loyalty and patriotism to the U.S., as those matters are not at issue. Instead, the clearly-consistent standard requires I resolve any doubt against Applicant, and his close family ties to Iran creates doubt about his security suitability. In reaching my decision, I have considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

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

SOR ¶ 1-Guideline B: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: For the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

DECISION

In light of all 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 H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

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

11. E2.A2.1.2.1. 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.

12. E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, 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.

13. *See* 50 U.S.C. § 1801(b).