

DATE: March 10, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31083

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert C. Coacher, Department Counsel

FOR APPLICANT

Jason C. Mills, Esquire

SYNOPSIS

Applicant's parents and seven siblings are citizens of and reside in Iran. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from the presence of his relatives in Iran. Clearance is denied.

STATEMENT OF THE CASE

On June 8, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On June 16, 2004, Applicant's answer to the SOR and request for a hearing was received. On October 14, 2005, I was assigned the case. On October 15, 2004, a Notice of Hearing was issued scheduling the hearing which was held on November 8, 2004. At that hearing, Applicant's counsel requested a continuance, which was granted for good cause. On December 1, 2004, a Notice of Hearing was issued scheduling a hearing which was held on December 15, 2004. On November 16, 2005 and December 27, 2004, DOHA received copies of the transcripts (Tr.).

FINDINGS OF FACT

The SOR alleges security significant foreign preference and foreign influence. The Applicant admits to the following: he traveled on his Iranian passport; he had no intention to renew his Iranian passport except should there be an illness or death in his immediate family; his parents and seven siblings are citizens of Iran; he maintains telephone contact with his parents and four siblings; and

he traveled to Iran to visit relatives in 1990, 1992, 1994, and 1998. Those admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

The Applicant is a 51-year-old electrical engineer who has worked for a defense contractor since July 1998, and is

seeking to obtain a security clearance. The Applicant is regarded by those who know him as a man of great integrity, extremely dedicated to his family and work. He is kind, caring, respectful, diligent, a team player, highly experience and intelligent, a concerned and devoted father, and a person of high integrity who believes in working hard and supporting his family. His latest performance assessment rates him as a "Successful Contributor."

In 1953, Applicant was born in Iran. In 1976, he came to the U.S. on a student visa to be a college student. In 1977, the married his wife, a natural born U.S. citizen, when they were both college students. His wife is a teacher. They have three children ages 25, 22, and 21 who are all U.S. citizens having been born in the U.S. In the past thirty years, since he came to the U.S., Applicant has visited Iran between four and six times. In 1979, when the Shah was in power, Applicant and his wife traveled to Iran. He graduated from college and then obtained his master's degree from universities in the U.S. Applicant became a naturalized U.S. citizen In July 1984. In 1985, he was granted a secret security clearance at his first defense related job. From 1985 through 1995, Applicant worked for various defense contractors during which time he held a clearance.

In 1992, Applicant and his wife made their second visit to Iran accompanied by their children then ages 8 through 12. The trip was to allow the children to meet their grandparents. Applicant also visited his family in Iran in 1994 and 1998.

Applicant's parents and siblings live in Iran. Applicant is the oldest of eight children. His father is a retired butcher who owned his own stores. His mother is a homemaker. His grandfather was a farmer. Applicant telephones his parents every two to four weeks. They are elderly and have serious health problems. He has sent his parents small amounts of money in the past, but will not do so in the future. He provides no support for his siblings. He has four sisters who are married and are homemakers. One of their husbands runs a sandwich shop, one works for a power company, and two work for drilling companies. He has three brothers: one runs a radiator repair shop, one sells appliances, and the last is a design engineer. One of their wives is a teacher and the others are homemakers. He calls four of his siblings every three months. He rarely talks with his other three siblings. All of his relatives live within a 25-mile radius of each other. Neither his parents, siblings, nor their spouses work for a foreign government.

Applicant had an Iranian passport which allowed U.S. citizens born in Iran to enter and exit the country so long as their stay does not exceed four months. Applicant referred to this as a "visa" passport. His sole use of his Iranian passport related to entering and exiting Iran. He maintained this Iranian passport to visit his parents. In November 2004, Applicant renounced his Iranian citizenship and surrendered his Iranian passport that had expired in July 2000.

Applicant is willing to bear arms for the U.S. Should the Iranian government put one of his relatives in a position of duress and demand classified information, Applicant would notify his company's security department and let the proper authorities take control. (Tr. 34) His relatives are unaware of the nature of his business other than knowing he is an engineer.

Administrative or official notice was taken of the certain facts concerning Iran as specified by Department Counsel in Exhibits 4, 5, 6, 7, 8, and 9. 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 Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the

relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when the person acts in such a way as to indicate a preference for a foreign country over the United States. Security concerns over the Applicant's possible foreign preference arise from his dual Iranian and U.S. citizenship. Disqualifying Condition (DC) 1 (E2.A3.1.2.1. *The exercise of dual citizenship*) applies. The Applicant possessed an Iranian passport and used it twice in traveling to and from Iran. Therefore, DC 2 (E2.A3.1.2.2. *Possession and/or use of a foreign passport*) and DC 8 applies.

In November 2004, Applicant renounced his Iranian citizenship and relinquished his expired Iranian passport. The surrender of the passport and initiating the renunciation of his foreign citizenship show a willingness⁽²⁾ to renounce dual citizenship. MC 4 (E2.A3.1.3.4. *Individual has expressed a willingness to renounce dual citizenship*) applies. I find for the Applicant as to SOR subparagraphs 1.a, 1.b, 1.c, and 1.d.

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under the Foreign Influence guideline, a security risk may exist when an individual's immediate family, or other persons to whom he may

be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. The Government established the Applicant's parents and siblings are citizens and residents of Iran. Disqualifying Condition (DC) 1 (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.*) applies.

An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B. 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 improperly influenced or is brought under control or used as a hostage by a foreign intelligence or security service. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. ⁽³⁾

Security concerns raised by the foreign citizenship and/or residency of Applicant's family members may be mitigated where it can be determined that they are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the family member and the United States (*see* E2.A2.1.3.1.). Applicant's parents, siblings, and their spouses are not now, nor have they ever been, agents of a foreign government, security or intelligence service.

However, the analysis does not end with a determination that Applicant's relatives are not agents of a foreign power. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non-coercive means of influence being brought to bear on, or through the foreign relations. In deciding if an individual has met the second prong of MC1, 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 is a state sponsor of terrorism. Given these circumstances--which are clearly beyond Applicant's control--Applicant's parents and seven siblings 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. I find this even after considering Applicant's claim he would turn the matter over to proper authorities if he was pressured. Accordingly, Applicant is unable to successfully mitigate the security concerns, SOR 1.a. and Guideline B are decided against him.

Applicant traveled to Iran in 1990, 1992, 1994 and 1998. Foreign travel without more is not of security significance. Applicant traveled to visit his family. This shows affection for his family, but does not establish foreign influence. Also he talks by telephone with his parents and four of his siblings. This too shows affection, but without more does not establish foreign influence. I find for Applicant as to SOR 2.b, 2.c, and 2.d.

The Government has not alleged, and the evidence does not show, that Applicant is anything but a loyal U.S. citizen. However, the issue is not his loyalty, but whether he is *vulnerable* to foreign influence that could result in the compromise of classified information because of his foreign relatives. Applicant has done nothing wrong. It is because his parents and siblings are foreign citizens living in Iran that Applicant's clearance must be denied.

In reaching my conclusions I have also considered the whole person factors set forth in paragraph 6.3 of the Directive.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Foreign Preference: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2 Foreign Influence: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For 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 the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. MC 4 only requires a "willingness to renounce" and does not require an applicant to actually renounce his foreign citizenship. Although actual renunciation is a stronger indication than mere willingness to do so.
3. ISCR Case No. 98-0419 (April 30, 1999) at p.5.