

DATE: April 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31352

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated the foreign influence security concerns posed by his family members living in Iran by demonstrating that those family members were not agents of a foreign government or so situated as to provide a pressure point on Applicant. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 16 December 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence. [\(1\)](#) [\(2\)](#) Applicant answered the SOR on 30 December 2003 and 4 February 2004 and requested a hearing. DOHA assigned the case to me 24 June 2004 and I convened a hearing on 22 July 2004. DOHA received the transcript 5 August 2004.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for subparagraphs 1.d. and 1.e.; accordingly I incorporate those admissions as findings of fact.

Applicant--a 45-year-old help desk specialist for a state department contractor--seeks access to classified information. He has not previously held a clearance.

Applicant was born in Iran--governed then by the Shah of Iran [\(3\)](#)-- in 1954. He lived in Iran and was educated there, completing high school. He was drafted into the military and served in the infantry as a military policeman in the Iranian Army from March 1975 to March 1977 (A.E. B).

Applicant came to the U.S. in approximately 1982 and became a naturalized U.S. citizen in October 1992. He obtained his U.S. passport in July 1994. Applicant's younger brother also immigrated to the U.S., became a doctor, and became a

naturalized U.S. citizen in April 1995. Applicant's spouse, also Iranian-born, became a naturalized U.S. citizen in August 1996. Applicant has two other siblings, both citizens and residents of Iran. His younger brother is a mechanic with his own shop. His younger sister is a housewife married to a mechanic who works in her brother's shop.

In May 1998, Applicant renewed his Iranian passport which he then used once in July 1998 to visit his ill father in Iran. His Iranian passport expired in July 1993 and he has not renewed it. He is willing to destroy his expired passport, or surrender it to any U.S. government agency. However, he is unwilling to surrender it to the government of Iran because he does not want to call attention to himself or his family members still living in Iran.

When Applicant applied for his clearance in March 2002 (G.E. 1), he disclosed his dual citizenship, foreign family members, and possession and use of an Iranian passport. He stated an intent to not renew his Iranian passport when it expired in July 2003. However, in subsequent interviews (G.E. 2, 3) he expressed a concern that he would have to renew it to travel to Iran if his mother died. He also expressed his unwillingness to surrender his Iranian passport to the Iranian government (but not to the U.S. government) out of concerns for himself and his family in Iran. At the time of the interviews, those family members included his mother and father and two siblings. Nevertheless, when Applicant's mother died in July 2003 (A.E. C), he did not travel to Iran and his father is now in the final stages of immigrating to the U.S. to live with Applicant (A.E. D). When his father immigrates to the U.S., he will sell the estimated-\$60,000.00 property that Applicant and his three siblings previously stood to inherit and bring those proceeds with him to the U.S. Applicant currently has infrequent contact with his two siblings in Iran, although his contacts were as frequent as three times a week when his parents were ill and when he was arranging his father's immigration to the U.S.

Applicant's coworker praises his honesty and work ethic. The state department agent (A.E. A) particularly praises Applicant for his meticulous attention to ensure that network software was "legal, installed to meet security guidelines, and approved by the appropriate personnel."

Iran is a fundamentalist Islamic republic with a poor human rights record and confrontational relations with the U.S.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Burden of Proof

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁴⁾

CONCLUSIONS

The government established a guideline B case, but the Applicant mitigated the security concerns. Applicant's father is

in the process of immigrating to the U.S. and liquidating his Iranian assets.⁽⁵⁾ His mother died in July 2003. Applicant did not travel to her funeral and does not intend to return to Iran. His military service was compulsory and completed before he immigrated to the U.S. and became a U.S. citizen.

The government acknowledges the substantial mitigation of subparagraphs 1.b.-f., but remains concerned that Applicant's unwillingness to surrender his Iranian passport for fear of drawing attention to himself and his two siblings still residing in Iran demonstrates an unacceptable vulnerability to foreign influence.⁽⁶⁾ At first glance, it may seem that Applicant's reticence establishes the very fact that he must disprove in order to obtain his clearance. However, closer examination of the circumstances of this case reveal nothing more than the good judgment and prudence required of individuals with access to classified information.

Applicant's brother is a mechanic in the private sector. His sister is a housewife whose husband works as a mechanic with her brother. None of these individuals is likely to be a foreign agent of Iran. Beyond their physical presence in Iran, none is currently situated to present a pressure point to Applicant unless he acts in some fashion to increase his potential vulnerability. While Iran has a poor human rights record against its own citizens, there is no record evidence that Iran possesses an effective intelligence gathering organization seeking U.S. government information, or that such an organization seeks to obtain that information from naturalized U.S. citizens with family members in Iran. Applicant last had contact with the Iranian government over six years ago when he renewed his now-expired passport. By keeping the expired passport and offering to destroy it or surrender it to U.S. government officials, rather than surrendering it to Iranian officials, Applicant reduces his vulnerability because he does not draw attention to himself or to his family members still living in Iran. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his two siblings still living in Iran. I resolve Guideline B for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

DECISION

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

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. The government did not alleged security concerns under foreign preference despite Applicant's foreign military service (1.e.), travel to Iran on an Iranian passport in 1998 (1.f.), and unwillingness to surrender the Iranian passport (1.g.).

3. Mohammad Reza Pahlavi became Shah in 1941, fled the country briefly in the early 1950s, but returned to power in 1953. In 1961, Iran initiated a series of economic, social, and administrative reforms--fueled by its vast petroleum reserves--that accelerated modernization and economic growth at an unprecedented rate. In 1978, religious and political opposition to the Shah (and his hated internal security and intelligence service) increased the level of domestic turmoil in Iran. In January 1979, the Shah fled, and in February 1979 revolution swept the country. The December 1979 constitution created a theocratic republic guided by Islamic principles. In November 1979, revolutionary "students" invaded the U.S. Embassy and took personnel there hostage, not releasing them until 1981. The U.S. severed diplomatic relations with Iran in April 1980.

4. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).

5. Even without liquidating the father's assets, Applicant's one-quarter share of the estimated \$60,000.00 estate provides little basis for influence.

6. The government did not allege foreign preference or the provisions of the Money Memorandum in asserting Applicant's unsuitability for a clearance, and I decline to amend the SOR to include foreign preference. Under the facts presented here, it would be anomalous to apply the Money Memorandum to require Applicant to take an action (surrender of an expired passport) that would mitigate an unalleged guideline but raise a disqualifying condition (conduct increasing an individual's susceptibility to pressure) under the guideline alleged. Further, Applicant's stated willingness to destroy the passport or surrender it to U.S. officials satisfies the spirit of the Money Memorandum.