

DATE: September 9, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11402

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's parents and sister are citizens and residents of Iran. His father-in-law is an Iranian citizen living in the U.S. and his mother-in-law is a naturalized U.S. citizen living in the U.S. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from the citizenship and residence of his relatives. Clearance is denied.

STATEMENT OF THE CASE

On March 20, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant, stating that DOHA could not make the preliminary affirmative finding [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. On April 1, 2003, the Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On May 27, 2003, the Applicant received a complete copy of the file of relevant material (FORM) dated May 5, 2003, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant's response to the FORM was due on June 26, 2003. No response has been received. I was assigned the case on September 3, 2003. The Department Counsel presented eight exhibits (Items). The record closed on September 3, 2003.

FINDINGS OF FACT

The SOR alleges foreign influence (Guideline B). The Applicant admits: his parents and sister are citizens of Iran living there and his father-in-law is a citizen of Iran. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 41-years-old, has worked for a defense contractor since December 2001, and is seeking a security

clearance.

The Applicant was born in Iran. In November 1997, he came to the U.S. to attend school and to make a life for himself. Since coming to the U.S., his only return to Iran was during the summer of 1979. In 1983, his father visited him in the United States. In July 1991, he became a naturalized U.S. citizen. His parents are citizens and residents of Iran, both of whom have U.S. alien registration cards. The Applicant last saw his father in 1992, which was the last time his father was in the U.S. His father is self-employed in the poultry/live stock trade and has no connections with the Iranian government. (Item 5, p.2) He last saw his mother, a retired school teacher, in 1998. His mother visits the U.S. every two or three years. She was last in the U.S. in 2002, when she visited the Applicant's sister. He calls his parents monthly. The Applicant's only financial interest in Iran is his possibility of inheritance.

The Applicant's father-in-law is a citizen of Iran, residing in the U.S., and owns a car wash. His father-in-law is more than 73 years of age, is not proficient in English, and because of the language requirements is not likely to qualify for U.S. citizenship. His mother-in-law is a naturalized U.S. citizen. The Applicant's sister is an Iranian citizen, residing in Iran who is a housewife, mother, and has no connection with the Iranian government. He occasionally talks with her by telephone. His sister visited him in the U.S. in 1983 and 1991. The Applicant has another sister who lives in the U.S. who was born in Iran and became a naturalized U.S. citizen in January, 1991. The Applicant has other extended family members in Iran to whom he is not close nor with whom he maintains contact. The Applicant's wife was born in Iran and became a naturalized U.S. citizen in March, 1999. The Applicant is willing to bear arms against Iran, if necessary. (Item 5)

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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Influence (Guideline B) The Concern: A security risk 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 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. E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include:

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; E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

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; E2.A2.1.3.1.

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.* 484 U.S. 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*, 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*, at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline B, (Foreign Influence). Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family and other persons to whom he is bound by affection who are not citizens of the United States, reside in a foreign country, or may be subject to duress. The Applicant's parents and sister are citizens and residents of Iran. Thus, DC 1-⁽²⁾ applies.

The Applicant has a heavy burden of persuasion to demonstrate he is not at risk of being vulnerable due to family ties. He must show close relatives are not in a position to be exploited by a foreign power. Additionally, the Applicant's parents and sister are immediate family members, with whom the individual has close ties of affection and are citizens of, and reside in a foreign country. His father is self employed in the poultry/ live stock trade business, his mother is a retired school teacher, and his sister is a housewife. There is no showing his parents or sister are agents of a foreign government. The Applicant's contact with his parents and sister cannot be said to be causal or infrequent. Therefore, MC 3 does not apply to them.

There is no indication the Applicant provides support to his relatives in Iran nor that they provide him support. However, because of the strength of the Applicant's ties with family members the security concerns engendered by the foreign citizenship of his parents and sister, who reside in Iran, are not mitigated. I find against the Applicant as to SOR subparagraph 1.a. and 1.c.

The Applicant's father-in-law is an Iranian citizen, but resides in the U.S. and owns a car wash. His mother-in-law is a naturalized U.S. citizen residing in the U.S. I find MC 1-⁽³⁾ applicable as to his parents-in-law and find for the Applicant

as to SOR subparagraph 1.b.

The Applicant may, at some future date, inherit property from relatives in Iran. The possibility of inheritance is purely speculative and, in this instance, of no security relevance. An Applicant does not have a financial stake in a country merely because he may inherit property at some future date. See ISCR Case No. 97-0403 at page 3 (Appeal Board decision May 13, 1998)

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

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 Influence (Guideline B):AGAINST FOR THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: 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 the Applicant. Clearance 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. DC 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. E2.A2.1.2.1.
3. MC 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. E2.A2.1.3.1.