

DATE: April 30, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15423

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 60-year-old naturalized U.S. citizen, has been employed by the same major defense contractor since shortly after his escape from Iran in 1982. He has held a security clearance in connection with his employment since 1990. Applicant's mother, brother, and sister are resident citizens of Iran, a country hostile to the U.S. Although his family ties to Iran raise a security concern for foreign influence under Guideline B, Applicant has successfully mitigated the security concern. Clearance is granted.

STATEMENT OF THE CASE

On June 18, 2003, 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. Applicant answered the SOR on July 18, 2003, requesting a clearance decision based on a hearing record.

Department Counsel indicated they were ready to proceed on October 7, 2003, and the case was initially assigned to another administrative judge the next day. On November 13, 2003, the case was reassigned to me due to case load considerations. A notice of hearing was issued to the parties scheduling the hearing for December 15, 2003. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript January 6, 2004.⁽²⁾

RULINGS ON PROCEDURE

At the close of the evidence, Department Counsel moved to amend the SOR to conform to the record evidence as follows:

Subparagraph 1.b was amended to show Applicant has one brother (not two) who is a resident citizen of Iran.

Without an objection, the SOR was amended accordingly.

FINDINGS OF FACT

In his answer, Applicant, with explanation, admitted the SOR allegations that his mother, brother, and sister are resident citizens of Iran. After a thorough review of the record evidence, I make the following essential findings of fact:

Applicant's testimony is found to be credible. Although Applicant is a well-spoken gentleman, I have given due consideration to the fact that English is not his native language and some minor allowances have been made for potential communication problems.

Applicant is a 60-year-old married man and father of two adult children. He holds a bachelor of science degree in electrical engineering and a master of science degree in engineering management from the same major U.S. university. He has lived continuously in the U.S. since November 1982. Likewise, he has worked for the same major defense contractor or its successor in interest since November 1982. He has lived at the same residential address since July 1984. He obtained U.S. citizenship through the naturalization process in January 1990, and has since held only a U.S. passport. His wife, also a naturalized U.S. citizen, has worked for a U.S. university since 1984.

Applicant was born and raised in Tehran, Iran. He is the oldest child in his family of four sons and one daughter. After attending elementary and high school, Applicant entered the Iranian Military Academy at age 17 where he studied for about three years. In about 1964, Applicant was commissioned as a second lieutenant in the Imperial Iranian Army. In 1965, he was transferred to the Imperial Iranian Air Force. In approximately 1967-68, Applicant spent about 11 months in the U.S. for military training.

Upon his return to Iran, Applicant, then serving at the rank of captain, was assigned to serve as a liaison officer to the U.S. Air Force Program Activation Task Force. He served in this position from January 1, 1969, to December 8, 1971. The purpose of this program was the turnover of a multimillion dollar air defense system for the Persian Gulf to the Imperial Iranian Air Force from the U.S. Air Force. In November 1972, Applicant's outstanding performance of duties as liaison officer resulted in the U.S. Air Force awarding him The Air Force Commendation Medal (Exhibit E).

In approximately 1973, Applicant and his family entered the U.S. Applicant attended a major university on scholarship provided by a major U.S. defense contractor (his current employer) doing business in Iran. In January 1975, Applicant received his bachelor's degree. In June 1976, he received his master's degree. During the same time, his wife, also a native-born Iranian, received her master's degree in higher education from the same university while working for the university.

Upon returning to Iran in 1976, Applicant was assigned as the director of systems engineering directorate for the Imperial Iranian Air Force. From 1976-79, he was responsible for a project working with the U.S. Air Force and with U.S. defense contractors involving the procurement and introduction of U.S. weapon systems. He also served as project officer to modify a commercial jet to serve as the Shah's airborne command post. During this same time, Applicant's spouse continued her work in education for the same U.S. university as an employee for the Iranian National TV, and later for the Center for Higher Education affiliated with a different U.S. university.

In February 1979, the Islamic Revolution took place resulting in the Shah's fall from power.⁽³⁾

Due to the regime change, Applicant arranged for his wife and two sons to leave Iran with the idea he would eventually join them in the U.S. During 1979-1982, Applicant, now serving at the rank of lieutenant colonel, engaged in unsuccessful efforts to obtain permission to depart Iran. He wanted to leave because he was concerned the new regime would consider him disloyal. Finally, in August 1982, Applicant decided to escape Iran. He escaped by flying to an Iranian city near Pakistan, and then paid smugglers to take him into Pakistan. His journey was made by foot, motorcycle, and pick-up truck, and he eventually made his way to Karachi where he picked up his U.S. visa. The visa was arranged by an executive of the defense contractor which provided Applicant the scholarship to study in the U.S. Thereafter, Applicant joined his wife and two sons in Australia where he stayed for about three months until his arrival in the U.S. on November 13, 1982. About five days later, Applicant started working for the defense contractor and has worked for that company or its successor since. Applicant's wife and two sons joined him in March 1983.

Before leaving Iran, Applicant's 19-year-old brother (the third son) was jailed as a prisoner because the brother was considered anti-regime. After several years in prison, and after Applicant was in the U.S., the brother was one of many political prisoners the regime executed. As a result of this event, Applicant and his family in Iran have hardened themselves to the current Iranian regime.

In January 1990, Applicant obtained U.S. citizenship through the naturalization process. His wife and sons are also naturalized U.S. citizens. In March 1990, Applicant applied for a security clearance in connection with his employment (Exhibit 1). He disclosed his Iranian military service and that his parents, two brothers, and sister were resident citizens of Iran. In May 1990, Applicant was interviewed by a special agent as part of the background investigation (Exhibit 2). He provided a detailed six-page sworn statement describing, among other things, the following: (1) his upbringing and education in Iran; (2) his military service in Iran; (3) his escape from Iran; (4) his foreign travel; (5) his naturalization as a U.S. citizen; (6) his family members in Iran; (7) that he provided no financial support to anyone in Iran; (8) that he would report to the FBI or DoD if he were ever approached by anyone one with a threat against one of his relatives in Iran; (9) he was willing to bears arms for the U.S. even against his native country; and (10) that as far as he knew, neither he nor his family members in Iran were ever approached by anyone in an effort to influence Applicant. Based on the information in Exhibits 1 and 2, Applicant was granted a security clearance in June 1990. Since then, Applicant has held the security clearance without an adverse incident, security violation, or infraction (Exhibit H).

Currently, Applicant's mother, brother, and sister are resident citizens of Iran. The other brother immigrated to the U.S. in August 2002 and lives in the same state as Applicant. Applicant has had no contact with his remaining brother in Iran due to a family rift about 15 years ago. Applicant believes this brother, a former officer in the Imperial Iranian Navy, is employed by a private company without ties to the Iranian government. Applicant's sister in Iran is a homemaker and not connected to the Iranian government. She is waiting for final approval of her petition, filed in 1993, to immigrate to the U.S. Applicant's 78-year-old mother is retired and not connected to the Iranian government. Other than occasional gifts, Applicant provides no support, financial or otherwise, to his family members in Iran. Due to their family history and the death of the brother, Applicant believes his family members have strong feelings against the Iranian regime. Likewise, Applicant has both resentment and hate toward the Iranian regime.⁽⁴⁾

Since his escape from Iran in 1982, Applicant has not returned to Iran and he has no plans to do so.⁽⁵⁾ His contact with family members in Iran is fairly limited, usually telephone calls to his mother and sister a few times per year. He also sends occasional gifts to his mother and sister.

Applicant and his spouse have no financial interests in Iran. Since 1982, they have accumulated substantial financial interests in the U.S. Applicant's current annual salary is more than \$100,000, and their net worth is estimated at about \$1,000,000, consisting of a residence, retirement accounts, and investments.⁽⁶⁾

Applicant's current work duties consist of insuring his company acts in accord with the license, and other applicable rules, to export its product. In other words, his job is making sure his employer follows the terms and conditions of the export license established by the U.S. Government. Applicant's annual performance evaluations from 1996-2002 reveal his work performance has been superior, outstanding (Exhibit D). His supervisor for that last seven years considers Applicant a valuable employee, a person of great discipline, highest integrity and moral values, and a person of unquestionable loyalty to the U.S. (Exhibit C).

As a native-born Iranian, Applicant is still considered a citizen of Iran by operation of Iranian law. Nevertheless, Applicant considers himself exclusively a U.S. citizen based on swearing his allegiance to the U.S. (Exhibit F) upon his naturalization. He testified credibly that he takes his oath seriously and views himself as a committed and loyal U.S. citizen. He is not involved or associated with any Iranian groups in the U.S.

Applicant knows there is a risk to his family members in Iran, a risk he accepted when he escaped. Moreover, Applicant testified credibly that if the Iranian government attempted to exert pressure on him through his family members in Iran he would immediately report the attempt to influence him to proper authorities, and he would not allow himself to be compromised even if it subjected his family to harm.⁽⁷⁾

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. Considering the record evidence as a whole, the following security guideline is most pertinent here: Guideline B for foreign influence. [\(8\)](#)

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. [\(9\)](#) There is no presumption in favor of granting or continuing access to classified information. [\(10\)](#) The government has the burden of proving controverted facts. [\(11\)](#) The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than a preponderance of the evidence. [\(12\)](#) The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard. [\(13\)](#) "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence." [\(14\)](#) 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. [\(15\)](#) In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(16\)](#)

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." [\(17\)](#) 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. 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. Concerning family ties, the language of Guideline B does not require a conclusion that an unacceptable security concern exists based solely on an applicant's family ties in a foreign country. [\(18\)](#) 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. [\(19\)](#) Finally, an applicant with immediate family members living in a country hostile to the U.S., like Iran, has a heavy burden to show those family ties do not pose a security risk or concern. [\(20\)](#)

Here, based on the record evidence as a whole, the government has established its case under Guideline B. The concern here is Applicant's immediate family members in Iran. DC 1 [\(21\)](#) applies because Applicant's mother, sister, and brother are resident citizens of Iran. He has no contact with his brother and occasional contact with his mother and sister by telephone. He has not traveled to Iran since his escape and neither he nor his spouse plan to travel there in the future. I have reviewed the remaining DC under the guideline and, consistent with Department Counsel's concession, [\(22\)](#) conclude none apply to the facts of this case.

I have reviewed the MC under the guideline and conclude that MC 1 [\(23\)](#) applies for Applicant.

The record evidence shows that Applicant's family members are not Iranian agents, and so the issue under MC 1 is if the family members are in a position to be exploited by the Iranian government. Iran has been hostile to the U.S. since the 1979 Islamic Revolution overthrew the former pro-western government. This situation, however, has remained essentially unchanged for the past 20-plus years. More specific to this case, Applicant has been a resident of the U.S. since 1982, and a citizen and a clearance holder since 1990. During this time his family members have lived in Iran with the exception of a brother who immigrated to the U.S. in 2002. If the Iranian government was trying to exploit Applicant's family members, it's doubtful it would have allowed his brother to depart Iran. At bottom, the best predictor of whether Applicant's family members are in a position to be exploited is what has happened in the past. Since he escaped Iran and came to the U.S. in 1982, no action, as far as Applicant knows, has been taken by the Iranian government to exploit his relationship with his family members in Iran.

Still, Iran's hostility to the U.S. places a heavy burden on Applicant to show his family ties to Iran do not pose a security risk or concern. On this point, Applicant has introduced evidence of his relatively limited contact with his mother and sister and no contact with his remaining brother in Iran. Likewise, his mother, brother, and sister are not employed by or connected to the Iranian military, law enforcement, or a governmental agency. Moreover, Applicant credibly asserts he would immediately report any attempt to use his Iranian family members against him. Although it is impossible to determine what would actually happen in that event, Applicant's assertion is entitled to some weight, especially in light of the following: (1) Applicant's strong ties to the U.S.; (2) his relatively limited contact with his Iranian family members; (3) his family members' hardened attitude toward the current Iranian regime; (4) his resentment and hate of the current Iranian regime; and (5) the fact he risked life and limb to escape Iran and come to the U.S. In addition, Applicant's current work requires him to follow and enforce rules for export licenses. This suggests he will continue following the rules and regulations for the proper handling and safeguarding of classified information, including reporting any attempts to exploit his relationship with his Iranian family members. Considering all these matters, I conclude Applicant has met his burden of showing that MC 1 applies notwithstanding Iran's hostility to the U.S.

The analysis does not necessarily end with the formal mitigating conditions as other facts and circumstances may mitigate the security concern. Iran continues to be hostile toward the U.S., as it was when Applicant was granted a clearance in 1990, and so in that respect the situation is essentially unchanged. Other than Applicant's brother immigrating to the U.S. in 2002, the relevant facts--his family ties--are unchanged. What has changed is Applicant's commitment to the U.S., which has grown stronger over the years and is, in my view, high. Applicant's high-level of commitment to the U.S. is a relevant and material fact weighing in his favor.

Also deserving consideration is Applicant's substantial ties or connections to the U.S. He has 20-plus years of commendable employment with a major U.S. defense contractor, and he intends to continue working for this company until retirement due to his sense of gratitude and loyalty. He has held a security clearance since 1990 without any adverse incidents, security violations, or infractions. His wife and children (all U.S. citizens), his professional career, and substantial financial interests are in the U.S., and these circumstances are unlikely to change. His brother is a recent immigrant, and his sister is waiting approval to immigrate to the U.S. Moreover, Applicant has lived in the U.S. for more than 20 years. These are examples of ties that bind and these ties are firmly rooted in the U.S. These ties or connections to the U.S. are relevant and material facts weighing in Applicant's favor.

To sum up, the record evidence demonstrates Applicant has all the indicators of a mature, steady, responsible, and trustworthy individual. Based on the record evidence as a whole, it is my predictive judgment that Applicant has the necessary strength of character to resist and report any potential foreign influence or pressure by either coercive or non-coercive means. My judgment is influenced by Applicant's commendable employment for a major U.S. defense contractor since 1982, his status as clearance holder since 1990, his significant ties to the U.S., and his firm commitment to the U.S. After weighing the record evidence as a whole, it is my commonsense determination that the facts and circumstances show Applicant's family ties to Iran do not pose an unacceptable security risk or concern of foreign influence.

In reaching my decision, I have considered the whole-person concept and the appropriate factors and guidelines in the Directive. And I have weighed the record evidence as a whole, and conclude the favorable evidence outweighs the unfavorable evidence. Under the totality of the facts and circumstances, I conclude Applicant has met his heavy burden. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

As required by ¶ E3.1.25 of Enclosure 3 to the Directive, below are my conclusions as to the allegations in the SOR:

SOR ¶ 1-Guideline B: For the Applicant

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: 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. Clearance is granted.

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. Starting at page 33 and ending at page 37, the transcript mistakenly refers to Department Counsel when Applicant was in fact testifying.
3. As requested by Department Counsel, I took official or administrative notice of the matters contained in Exhibit 4, a report for Congress prepared by the Congressional Research Service about "Current Developments and U.S. Policy" in Iran as of March 2003. In particular, the report notes the following: (1) the President identified Iran as part of the "axis of evil" in his January 2002 State of the Union address; (2) key U.S. concerns are Iran's efforts to acquire weapons of mass destruction and delivery means, and its support for terrorist groups; and (3) Iran's human rights practices are also a major concern. On the third point, the report specifically notes that "U.S. and U.N. human rights reports cite Iran for widespread human rights abuses, (especially of the Baha'i faith), including assassinations and executions of regime opponents (Kurds, People's Mojahedin, and others) in Iran and abroad" (Exhibit 4 at CRS-7). In addition to these matters, the recent historical relationship between the U.S. and Iran, which is relevant to Applicant's case, is described in the report, in part, as follows:

The February 11, 1979, fall of the Shah of Iran, a key U.S. ally, opened a long rift in U.S.-Iranian relations. On November 4, 1979, radical "students" seized the U.S. Embassy in Tehran and held its diplomats hostage until minutes after President Reagan's inauguration on January 20, 1981. The United States broke relations with Iran on April 7, 1980, and the two countries have had no official dialogue since. The exception was the abortive 1985-86 clandestine arms supply relationship with Iran in exchange for some American hostages held by Hizballah in Lebanon (the so-called "Iran-Contra Affair"). Iran maintains an interests section in Washington (Embassy of Pakistan), staffed by Iranian permanent resident aliens or U.S. citizens of Iranian descent. The U.S. protecting power in Iran is Switzerland (Exhibit 4 at CRS-8).

In addition, Iran, also known as the Islamic Republic of Iran, is now governed by secular and religious leaders and governing bodies and duties often overlap; the chief ruler is a religious leader, or in his absence, a council of religious leaders. Since the 1979 Islamic revolution, much of the urban upper class of prominent merchants, industrialists, and professionals, favored by the former Shah, lost standing and influence to senior clergy (the mullahs) and their supporters. Although I was not asked to take administrative or official notice, these are facts known to this agency through its expertise in deciding security-clearance cases involving foreign influence and preference. *See* ISCR Case No. 99-0452 (March 21, 2000) at p. 4.
4. Answer.

5. Transcript at pp. 57-58.
6. Transcript at pp. 74-75.
7. Transcript at pp. 75-80.
8. Directive, Enclosure 2, Attachment 2, at pp. 21-22.
9. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
10. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
11. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
12. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
13. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
14. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
15. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
16. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
17. *Egan*, 484 U.S. at 528, 531.
18. ISCR Case No. 98-0419 (April 30, 1999) at p. 5.
19. *Id.*
20. ISCR Case No. 02-04786 (June 27, 2003) at p. 4 (citation omitted).
21. "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."
22. Transcript at p. 87.
23. "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."