

DATE: April 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19840

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Robert J. Tuider, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The security concerns raised by a 57-year old Iranian-born naturalized American Applicant with a permanent resident, non-U.S. citizen, wife (a citizen of Iran), and a mother (with whom he retains a close telephone relationship), siblings and in-laws (with whom he has no closer than a casual or infrequent relationship, if that), who are residents and citizens of Iran, none of whom are agents of that foreign government or in a position to be exploited by that government, have been mitigated by the evidence developed herein. Clearance is granted.

STATEMENT OF THE CASE

On January 28, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated February 18, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to Administrative Judge Joseph Testan on March 11, 2003, but, due to caseload considerations, was reassigned to, and received by, this Administrative Judge that same day. A notice of hearing was issued on March 14, 2003, and the hearing was held before me on March 26, 2003. During the course of the hearing, three Government exhibits, five Applicant exhibits, and the testimony of three Applicant witnesses (including the Applicant), were received. The transcript (Tr.) was received on April 4, 2003.

RULINGS ON PROCEDURE

During the proceeding, under Rule 201(b)(2), Federal Rules of Evidence, Department Counsel requested that Official

Notice be taken of certain adjudicative facts as set forth in two documents furnished for consideration. There being no objection interposed by Applicant, Official Notice was taken of the full transcript of The President's State of the Union Address, made on January 28, 2003, consisting of 13 pages; and the Congressional Research Service Issue Brief for Congress (Iran: Current Developments and U.S. Policy), dated January 29, 2003, consisting of 18 pages.

FINDINGS OF FACT

Applicant has admitted all the factual allegations pertaining to foreign influence under Criterion B (subparagraphs 1.a. through 1.c.). 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:

Applicant is a 57-year old employee of a defense contractor seeking to obtain a security clearance, the level of which has not been revealed. He had previously been granted a secret security clearance in 1987, and maintained that clearance until it was suspended about one month before the hearing.

Applicant was born in 1946 in Iran.⁽¹⁾ He served in the Iranian equivalent of the Peace Corps for 14 months upon graduation from high school, teaching in various villages how to read and write and do arithmetic.⁽²⁾ After completing his obligation, Applicant was hired by a subsidiary of a U.S. corporation operating oil rigs in the Persian Gulf.⁽³⁾ After about six months to a year as a control room operator, Applicant had saved enough money to realize his dream of going to the U.S.⁽⁴⁾ Rather than relying on a government scholarship offered by the Shah, which would have obligated him to return to Iran to donate two years of service in his field of expertise, he chose to fund his transportation and all expenses by himself, using his savings.⁽⁵⁾ He was accepted for enrollment at a U.S. university, received a student visa, and eventually (in approximately 1971), at the age of 24, left Iran "to obtain better opportunities for himself" and because of his dream.⁽⁶⁾ He decided it would be more economical if he enrolled at a junior college in the southern U.S., and attended the college from 1971 to 1973.⁽⁷⁾ While attending the college, he met a woman (a U.S. citizen) who, in the 1970's, became his first wife.⁽⁸⁾ They had three children--all of whom were born in the U.S.⁽⁹⁾ He and his first wife eventually grew apart, and in 1994, they divorced.⁽¹⁰⁾

Applicant continued his education at two other colleges while holding two jobs to support himself and his family, and he graduated in 1981.⁽¹¹⁾ With the exception of brief periods of unemployment, he has held a series of engineering positions with various companies since 1981, and has been a multi-discipline engineer with his present employer since May 2001.⁽¹²⁾

Applicant became a naturalized U.S. citizen, and renounced his Iranian citizenship, in May 1982.⁽¹³⁾

Because of his first marriage to someone not an Iranian, Applicant and his family had not been on "good terms" since 1974.⁽¹⁴⁾ Shortly after the revolution and the overthrow of the Shah, and fearing he might never see his family again, Applicant returned briefly to Iran in July 1979 and stayed with his parents.⁽¹⁵⁾ The U.S. broke diplomatic relations with Iran in April 1980.⁽¹⁶⁾ Between Applicant's 1979 visit and 1987, his relations with his family were basically nonexistent. He received one telephone call informing him of his father's death and tried to call Iran when his third child was born.⁽¹⁷⁾ Applicant never returned to Iran after that visit nearly 24 years ago.

Nevertheless, relations with his family in Iran eventually improved. During a telephone conversation with his mother before June 1998, Applicant agreed with his mother to meet with an "arranged bride." He traveled to Turkey to meet with his future bride--actually a member of his extended family through marriage (by way of Applicant's father's step-brother's wife's brother--his bride's father).⁽¹⁸⁾ Applicant and his future bride, and their respective mothers met in Istanbul for two weeks, and they liked each other and the marriage was arranged.⁽¹⁹⁾ They completed the required documents and he returned to the U.S. She subsequently arrived and they were married in the U.S. in June 1998.⁽²⁰⁾ His

wife is a permanent resident alien, and has applied to become a citizen of the U.S. (21) Their daughter was born in the U.S. in 1999. (22)

Applicant's immediate family members still residing in Iran are his 75 year old widowed mother; two sisters (aged 51 and 42 years, respectively), (23) each married to non-government workers; and three half-brothers (aged 70, 65, and 61 years, respectively), all working in a textile/apparel company owned by the oldest half-brother. None of those family members belong to any religious or political organizations, and none of them are affiliated with the Iranian government. (24) Applicant's contacts with his mother since 1998 have been solely by telephone, and he continues to speak with her because his calls offer his ill mother "a sense of peace and soothes her pains" as well as giving him peace of mind. (25) The conversation is always about their respective health and his wife and child. (26) Applicant is not close with his sisters or half-brothers and, since his 1971 departure from Iran, has never has any contact with the two younger half-brothers, and has not seen his sisters or the oldest half-brother since his one trip back to Iran in 1979. (27) He has no idea where the half-brothers reside.

Applicant's in-laws reside in Iran. His wife's father is a 67-year old retired officer in the Shah's Air Force who retired nearly 30 years ago and receives a small pension. (28) He subsequently owned a small business that he sold, and now enjoys his retirement. He "despises Iran's present regime and their propaganda against the west." (29) His health has deteriorated and he is under a doctor's supervision. Applicant's mother-in-law is a 64-year old homemaker who has been ill for the past two years. (30) Applicant's wife speaks with her parents by telephone approximately two times each month, but Applicant has no contact with them at all. (31) It is his wife's intention to bring her parents to the U.S. as soon as she becomes a U.S. citizen. (32) Neither Applicant nor his wife have any contact with her three siblings, none of whom work for the Iranian government or belong to any anti-western organizations. (33)

Iran is a member of what President George W. Bush characterized as the "axis of evil." (34) While there was previously a lengthy period of friendship between Iran and the U.S., since the fundamentalist Islamic revolution that toppled the Shah in early 1979, the resulting totalitarian government has repressed its people, pursued weapons of mass destruction, and supported terror. (35) Iran is known to conduct intelligence operations and economic espionage against the U.S. Iran is a nation whose interests are inimical to the United States.

Neither Applicant nor his wife has any financial interests in Iran whereas their entire holdings are in the U.S. Applicant loves the U.S. and is willing to give his life for it if he is asked to do so. (36)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other

pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

[GUIDELINE B - FOREIGN INFLUENCE]: 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: (1) not citizens of the United States or (2) 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.

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

(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;

(E2.A2.1.2.2.) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists;

Conditions that could mitigate security concerns include:

(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 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.A2.1.3.3.) contact and correspondence with foreign citizens are casual and infrequent;

(E2.A2.1.3.5.) foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," [\(37\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that both standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness testimony, demeanor, and credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline B, the Government has established its case. Applicant has been portrayed as a person who is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation--in this instance, his mother, two sisters, and his three half-brothers, as well as the parents and siblings of Applicant's wife--are not citizens or residents of the United States or may be subject to duress. The concern also carried over to Applicant's wife because of her citizenship status as a non-citizen permanent resident of the U.S. These situations raise the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. In support of its contentions, the Government has cited the fact Applicant's wife is a citizen of Iran, and his mother, two sisters, and his three half-brothers, as well as the parents and siblings of Applicant's wife, are citizens of, and reside in, Iran.

It is uncontroverted that Applicant's wife is a citizen of Iran residing in the U.S., and those other specified members of Applicant's family and his wife's family, are citizens and residents of Iran. Those simple facts, standing alone, might be sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure. 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: [\(38\)](#)

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

The citizenship status of Applicant's family and in-laws--including those persons with whom he has close ties or obligations and those with whom he has either infrequent contact or close ties or obligations--as well as the citizenship status of his wife, when considered in light of the nature of the government in Iran--a totalitarian government whose interests are inimical to the United States and which is known to conduct intelligence operations and economic espionage against the U.S.--facilitates an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein. In this regard, see Foreign Influence Disqualifying Condition (DC) 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*) and DC E2.A2.1.2.2. (*sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists*).

However, also applicable, in this instance, is Foreign Influence Mitigating Condition (MC) 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 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*), as well as MC E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*). In this instance, after an examination of the evidence, I determine that the relationship between Applicant and his sisters and his half-brothers, as well as his in-laws, and his wife's siblings, cannot be considered anything closer than casual and infrequent, if that. Applicant has not seen, nor contacted, two of his half-brothers, the man who is now his father-in-law, or his current wife's siblings, since he initially departed Iran in 1971--over 31 years ago; and has not seen, nor communicated with, his two sisters, or oldest half-brother since he visited Iran in 1979--over 23 years ago. And, he has not seen, nor communicated with his mother-in-law since they met in Turkey in June 1998--nearly five years ago.

The only person seemingly coming within the ambit of security concern is Applicant's mother. That relationship, while continuing solely via telephone communications, remains emotionally, but not physically, close. But, as Applicant described the situation with his mother, the Iranian government is not aware of what he does, and even if they were to find out, his mother would "die before even telling [Applicant] that they're squeezing her for information." [\(39\)](#) Equally meaningful is the historical perspective. Applicant had, until recently held a security clearance since 1987, and there

have been no instances of Iranian government efforts to capitalize on the situation involving his mother's Iranian residence and citizenship or Applicant's employment or security clearance status.

Considering the citizenship and residency status of Applicant's wife, I do not consider her to constitute an unacceptable security risk.

Also applicable, in this instance, is MC E2.A2.1.3.5. (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*). As noted above, neither Applicant nor his wife has any financial interests in Iran whereas their entire holdings are in the U.S.

Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to Guideline B. Accordingly, allegations 1.a. through 1.c. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is suitable for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: 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.

Robert Robinson Gales

Chief Administrative Judge

1. *See* Government Exhibit 1 (Security Clearance Application (SF 86), dated April 25, 2001), at 1.
2. *See* Government Exhibit 3 (Statement of Subject, dated October 6, 1987), at 2.
3. *Ibid.*
4. *Ibid.*
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*
8. *Ibid.* There is some inconsistency regarding dates in that Applicant has furnished both 1974 in one statement (made in 1987) and 1970 in another statement (made in 2002) as the year he was married to his first wife. Considering the time

span involved, I am more inclined to accept the date made in the earlier statement as being more accurate.

9. *See* Government Exhibit 2 (Statement, dated March 28, 2002), at 2. Applicant also has two U.S. born grandchildren.

10. *Ibid.*

11. *See* Government Exhibit 1, *supra* note 1, at 2.

12. *See* Government Exhibit 2, *supra* note 9, at 1.

13. *See* Government Exhibit 1, *supra* note 1, at 1.

14. *See* Government Exhibit 3, *supra* note 2, at 3.

15. *Ibid.*

16. *See* Congressional Research Service Issue Brief for Congress (Iran: Current Developments and U.S. Policy, dated January 29, 2003), at CRS-7.

17. *See* Government Exhibit 3, *supra* note 2, at 3.

18. Tr., at 54.

19. Tr., at 55.

20. *See* Government Exhibit 1, *supra* note 1, at 3. *See also*, Tr., at 56.

21. Tr., at 58.

22. *See* Government Exhibit 2, *supra* note 9, at 2.

23. A third sister was physically and mentally disabled and placed in an institution, but she subsequently passed away. Tr., at 65. *See also* Government Exhibit 3, *supra* note 2, at 2.

24. *See* Response to SOR, dated February 18, 2003, at 1.

25. *Ibid.*

26. *Ibid.*

27. *Ibid.*

28. *Id.*, at 2. *See also*, Applicant Exhibit A (Affidavit from a Federation of Retired Military People--an unofficial retired group), undated.

29. *See* Response to SOR, *supra* note 24, at 2.

30. *Ibid.*

31. *See* Government Exhibit 2, *supra* note 9, at 2.

32. Tr., at 66.

33. *See* Response to SOR, *supra* note 24, at 2.

34. *See* President George W. Bush's comments regarding Iran in The President's State of Union Address, dated January 29, 2002, at www.gov.com/union_1_2002.html, at 5.

35. See President George W. Bush's comments regarding Iran in The President's State of Union Address, dated January 28, 2003, at www.gov.com/union_1_2003.html, at 9.

36. See Response to SOR, *supra* note 24, at 2.

37. See Executive Order 12968, "*Access to Classified Information*," as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (*see* Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see* Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).

38. *ee* ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.

39. Tr., at 61.