

DATE: April 11, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-20469

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Although the Applicant presently has a negative monthly cash flow, he has never been past due on any of his indebtedness. This negative cash flow is attributed to a down turn in the stock market. He has a money market fund reserve of more than \$88,000, about \$400,000 in stock, and \$1,000,000 in equity in a house worth between \$1,670,000 and \$1,900,000. He is not financially overextended. There is also no showing that any members of his immediate family are citizens of, or present in, Iran. They are Jewish, and all left Iran for the United States, seeking a better life. All are U.S. citizens. Clearance is granted.

**STATEMENT OF THE CASE**

On October 29, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on December 9, 2002.

The case was received by the undersigned on January 30, 2003. A notice of hearing was issued on February 26, 2003, and the case was heard on March 14, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called two witnesses to testify on his behalf. The transcript was received on March 31, 2003. The issues raised here are whether the Applicant's alleged financial considerations and foreign influence militate against the granting of a security clearance.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The

Applicant is 55 years of age, has a degree in electrical engineering, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

### Guideline F - Financial Considerations

1.a. and 1.b. Due to the recent fall of the stock market, the Applicant has a monthly negative cash flow of about \$1,000 (Transcript (TR) at page 38 line 24 to page 39 line 21). However, he has never been past due on any of his indebtedness (TR at page 26 line 20 to page 27 line 10, *see also* Applicant's Exhibit (AppX) F). He has in excess of \$88,000 in a money market fund to make up any monthly shortfall (TR at page 30 line 23 to page 9, and AppX D). The Applicant also has about \$400,000 worth of stock (TR at page 33 lines 6~16). Finally, the Applicant has \$1,000,000 in equity in a house worth between \$1,670,000 and \$1,900,000 (TR at page 32 line 1 to page 33 line 2).

### Guideline B - Foreign Influence

2.a.~2.c. The Applicant's siblings, wife and in-laws were born in Iran (Government Exhibit (GX) 1 at pages 2~4). They are Jewish, and they all left Iran for the United States (TR at page 22 line 19 to page 23 line 22, and at page 27 lines 11~21). They are all now U.S. citizens, and there is no showing that they also retained their Iranian citizenship (TR at page 27 lines 14~21, at page 40 line 22 to page 41 line 11, and at page 41 lines 15~18). The Applicant's spouse and father-in-law categorically deny that they are Iranian citizens (TR at page 47 lines 11~18, and at page 52 lines

9~25). His father-in-law, in fact, has received a Certificate of Special Congressional Recognition for his service to his community (AppX C).

### Mitigation

A United States Navy retired Vice Admiral speaks highly of the Applicant (AppX A), and he is well thought of in the American Jewish community (AppX B).

## **POLICIES**

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

### Financial Considerations

Conditions that could raise a security concern:

None

### Foreign Preference

Conditions that could raise a security concern:

None

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.

- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline B (foreign influence), and Guideline F (financial considerations), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

### **CONCLUSIONS**

The Applicant presently has a negative monthly cash flow of about \$1,000, but he has never been past due on any of his indebtedness. This negative cash flow is directly attributed to a down turn in the stock market. He has a money market fund reserve of more than \$88,000, about \$400,000 in stock, and \$1,000,000 in equity in a house worth between \$1,670,000 and \$1,900,000. He is not financially overextended. Guideline F is therefore found in his favor.

There is no showing that any members of his immediate family are citizens of Iran. They are Jewish, and all left Iran for the United States, seeking a better life. All are U.S. citizens. None of the Applicant's immediate family are presently connected with or could be exploited by any foreign government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. Guideline B is also found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged financial considerations and foreign influence. The Applicant has thus met the mitigating conditions of Guidelines B and F, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and F.

### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

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

Richard A. Cefola

Administrative Judge