

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant was born in Iran and came to the United States for graduate education. He has seven siblings; four in Iran and one in Canada who are Iranian citizens, and two in Canada who are Canadian citizens. He provided funds for a sibling in Canada to start a business in Iran but derives no interest or benefit from the business. He provided funds to a Canadian citizen sibling to start a business, but the funds have been repaid. He talks to each sibling a few times a year and saw all except the two Canadian citizens at a family reunion in Iran two years ago. He surrendered all Iran passports to Iranian authorities. He has returned to Iran five times. Applicant has not mitigated the security concerns under Foreign Influence but has under Foreign Preference. Clearance is denied.CASENO: 02-20471.h1

DATE: 01/31/2005

DATE: January 31, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-20471

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

## **SYNOPSIS**

Applicant was born in Iran and came to the United States for graduate education. He has seven siblings; four in Iran and one in Canada who are Iranian citizens, and two in Canada who are Canadian citizens. He provided funds for a sibling in Canada to start a business in Iran but derives no interest or benefit from the business. He provided funds to a Canadian citizen sibling to start a business, but the funds have been repaid. He talks to each sibling a few times a year and saw all except the two Canadian citizens at a family reunion in Iran two years ago. He surrendered all Iran passports to Iranian authorities. He has returned to Iran five times. Applicant has not mitigated the security concerns under Foreign Influence but has under Foreign Preference. Clearance is denied.

## **STATEMENT OF THE CASE**

On July 27, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on August 2, 2004. The SOR alleges security concerns under Guideline B (Foreign Influence) of the Directive. The SOR was amended at the hearing without objection from Applicant to also allege security concerns under Guideline C (Foreign Preference) of the Directive.

Applicant answered the SOR in writing on September 4, 2004. He admitted four and denied two of the allegations under Guideline B. He requested a hearing before an administrative judge. The request for a hearing was received by DOHA on September 8, 2004. Department Counsel was prepared to proceed with the case on October 7, 2004. The case was assigned to another administrative judge on October 12, 2004, and reassigned to me on November 10, 2004. A Notice of Hearing was issued on October 29, 2004. The hearing was held on December 16, 2004. Eleven government exhibits and 15 Applicant exhibits and the testimony of the Applicant were received during the hearing. At the hearing, Applicant denied the allegations under Guideline C. The record was held open and Applicant submitted additional documents pertaining to the allegations under Guideline C. The transcript was received on January 17, 2005.

## **FINDINGS OF FACT**

Applicant is a 46-year-old acoustics engineering specialist for a defense contractor. Applicant was born in Iran but came to the United States as a college student in 1977. He has a bachelor's, master's, and doctorate in engineering from United States universities. After receiving his doctorate, Applicant for a number of years was an engineering professor at three different United States universities. He then received a small business loan and started his own company. After running his company for a few years, Applicant was employed by the defense contractor. <sup>(1)</sup>

Applicant is married to an Iranian woman he met on a business trip to Iran. They have an infant son. Both the Applicant and his wife are naturalized United States citizens and the son is a native born United States citizen. <sup>(2)</sup> Applicant has a large family. His parents are deceased. He has five brothers, two reside in Iran and three reside in Canada, and two sisters who reside in Iran. The four siblings in Iran and one in Canada are Iranian citizens and the other two siblings in Canada are Canadian citizens. <sup>(3)</sup> None of Applicant's family served in the Iranian military and none work for the Iranian government

Since coming to the United States almost 30 years ago, Applicant has made five visits to Iran. The last trip was with his wife to attend a family reunion in Iran in 2002. He flew to and from Iran for four days to attend a three day family reunion. After becoming a United States citizen and obtaining a United States passport, Applicant used his United States passport to leave and reenter the United States and his Iranian passport to enter and leave Iran. Applicant has had three passports from Iran; two expired and one current. He surrendered all passports on December 16, 2004, to appropriate Iranian authorities and no longer possesses an Iranian passport. <sup>(4)</sup>

Applicant's oldest brother resides in Canada with his family and is an Iranian citizen but he has applied for Canadian citizenship. Applicant talks to this brother about once or twice a year on special occasions and saw him at the family reunion over two years ago in Iran. The brother owns a business in Iran. This brother assisted Applicant financially with his college expenses. When the brother was establishing his business in Iran, Applicant reciprocated the assistance and provided his brother financial aid to help establish the business. In submitting his security clearance application, Applicant thought he may have an interest in the company since he provided financial support. However, Applicant and his brother agreed Applicant has no financial or other interests in the business. Applicant owns no stock in the company and does not now nor anticipates receiving any benefit from the company <sup>(5)</sup>

Applicant has two other brother in Canada who own restaurants in different cities and are Canadian citizens. Neither of these brothers are married. Applicant talks to each brother a few times a year by phone. Applicant provided one of the brothers a loan to start a business in Canada. The loan has been repaid. Applicant has no business interest or derives any benefit from the restaurant businesses of his brothers in Canada. <sup>(6)</sup>

Applicant has four siblings residing in Iran. None work for the government. One sister is a housewife and her husband is a business man. They have four daughters, one of whom resides in Canada and is a Canadian citizen. He speaks to this sister about two or three times a year by phone and saw her at the family reunion in Iran two years ago. His sister and her family are trying to immigrate to Canada and are in the final stages of approval. <sup>(7)</sup>

Applicant's other sister is a school teacher and her husband is an engineer for a private company. Applicant speaks to her about twice a year and saw her at the family reunion two years ago in Iran. She and her family are also trying to immigrate to Canada but approval is not imminent. <sup>(8)</sup>

A brother is a car salesman in Iran, and is married with two teenage children. Applicant talks to him by phone about twice a year and saw him at the family reunion in Iran two years ago.<sup>(9)</sup> Applicant's other brother in Iran took over the father's business when he passed way. He is married with one young child. Applicant talks to this brother about once or twice a year by phone. He saw him at the family reunion two years ago.<sup>(10)</sup>

Applicant provides no assistance or financial support to any relatives in Iran or Canada. He did send gifts and financial support to his mother when she was living. He has not sent any gifts or provided any financial support to anyone in Iran since his mother died.<sup>(11)</sup>

Iran is a country that has been hostile to the United States since the 1979 revolution that overthrew the former pro-western government. Iran's support for terrorist groups has long concerned the United States. Iran's human rights practices are also a concern for the United States. The United States Department of State warns United States citizens, particularly United States citizens of Iranian origin, to consider carefully the risks of travel to Iran. The continued support for terrorism and human rights violations contributed to President Bush's strong criticism of Iran in his 2002 State of the Union message and his designation of Iran as one of the "Axis of Evil." However, there is no indication that Iran has ever attempted to exploit any resident of Iran for the purpose of compromising a security clearance holder in the United States.<sup>(12)</sup>

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.* 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 judgement, 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." Exec. Or. 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.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider: (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 applicant'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 of recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶E2.2.2.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Under Guideline B (Foreign Influence), a security concern exists when an individual's immediate family and other persons to whom the Applicant 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Directive ¶ E2.A2.1.1. Under Guideline C (Foreign Preference), a security concern exists when an individual acts in such a way as to indicate a preference for a foreign country over the United States so that he may be prone to provide information or make decisions that are harmful to the interests of the United States. Directive ¶ E2.A3.1.1.

Applicant's siblings who are citizens of Iran residing in either Iran or Canada bring this matter under Foreign Influence Disqualifying Condition Directive ¶ 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*). An immediate family member includes *spouse, father, mother, sons, daughters, brothers, sisters*. Directive ¶ E2.A2.1.3.1. Applicant's brothers and sisters in Iran, and his Iranian citizen brother in Canada, are immediate family members. They are citizens of, and reside and are present in a foreign country. Since Applicant only sent gifts to his mother and she is deceased, there is no disqualifying

condition for providing gifts to relatives in Iran. I conclude the disqualifying condition has been established as to the siblings in Iran and Canada who are citizens of Iran.

The Foreign Influence Mitigating Conditions that may apply are Directive ¶ E2.A2.1.3.1 (*a determination that the immediate family member(s) 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*); and Directive ¶ E2.A2.1.3.3 (*contact and correspondence with the foreign citizens are casual and infrequent*). None of Applicant's siblings are agents of a foreign government. Applicant left Iran almost 30 years ago but he has returned five times, the latest trip being approximately two years ago for a family reunion with his siblings. He has continued to have telephone contact with each of his siblings in Iran a few times a year. Applicant has kept in contact with his brother in Canada who is a citizen of Iran and owns a substantial business in Iran. He saw each of them at the family reunion in Iran two years ago. In cases where the issue is the potential that a hostile foreign power may exploit Applicant's family ties in a foreign country, Applicant has a very heavy burden to show that his family ties with relatives in the foreign power do not pose a security risk.<sup>(13)</sup> Applicant has continuing and recurring contacts with his siblings in Iran and his brother in Canada. He flew a long distance and time to attend a family reunion for a short time. This shows the depth of relationship with his siblings. Applicant has not met his heavy burden to mitigate the foreign influence disqualifying condition concerning his siblings in Iran and Canada who are citizens of Iran.

Applicant's potential interest in his brother's business in Iran and his loan to his brother in Canada to start a business bring the matter under Foreign Influence Disqualifying Condition Directive ¶ E2.A2.1.2.8 (*a substantial financial interest in a country, or in any foreign-owned or-operated business that could make the individual vulnerable to foreign influence*). This disqualifying condition can be mitigated under Directive ¶ E2.A2.1.3.5 (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*). Applicant indicated in his security clearance application he had an interest in a business in Iran. At the hearing, Applicant provided documentation that he did not have such an interest and that he does not and will not derive any interest or benefit from the company. I conclude the Applicant has provided sufficient documentary evidence that he does not have a financial interest in the Iranian business. The loan to his brother to start a restaurant in Canada has been repaid and Applicant has no interest in nor will he derive any benefit from the restaurant. I conclude the disqualifying condition has not been established.

Applicant's use and possession of a foreign passport after becoming a United States citizen and possessing a United States passport brings the matter under Foreign Preference Disqualifying Conditions Directive ¶ E2.A3.1.2.2 (*exercise of dual citizenship*); and Directive ¶ E2.A3.1.2.2 (*possession and/or use of a foreign passport*). A memorandum issued by Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, Arthur L. Money, dated August 16, 2000, (Money Memorandum) required that a security clearance be denied or revoked for an Applicant with a foreign passport "unless the applicant surrenders the foreign passport..." Surrender of a passport contemplates returning it to the issuing authority. The mitigating condition that may apply to Applicant is Directive ¶ E2.A3.1.3.4 (*individual has expressed a willingness to renounce dual citizenship*). Applicant used and possessed an Iranian passport after becoming a United States citizen so the disqualifying conditions have been established. However, Applicant has surrendered all his Iranian passports to the proper Iranian authorities. In surrendering the passport, he also informed Iranian authorities he was denouncing his Iranian citizenship. He has mitigated any security concerns under Guideline C and has met the requirements of the Money Memorandum. I conclude there is no security concern under Guideline C.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

#### **FORMAL FINDINGS**

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2, Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

### **DECISION**

In light of all of the circumstances presented in the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge

1. Tr. 12-15.
2. Tr. 19.
3. Tr. 21.
4. Tr. 30 and additional documents (Letter to Pakistan Embassy, December 16, 2004).
5. Tr. 31-34 and Exhibit H (Agreement of December 9, 2004).
6. Tr. 34-39.
7. Tr. 40-42.
8. Tr. 42-44.
9. Tr. 44-45.
10. Tr. 46.
11. Tr. 49.
12. Exhibit 9 (US Department of State Background Note: Iran, August 2004), 6-7.
13. ISCR Case No. 01-26893 (October 16, 2002), 8.