

DATE: January 16, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-23187

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 47 year-old, United States born citizen. Her husband was born in Iran and became a naturalized United States citizen. The parents of Applicant's husband are citizens of and reside part time in Iran and part time in the United States. They are retired and have never worked for the Iranian government. Applicant's husband also has siblings who are citizens of and reside in Iran. No evidence was presented as to their status regarding employment with the government of Iran or their contacts with Applicant. By not mitigating these foreign influence security concerns, Applicant failed to demonstrate it is clearly consistent with the national interest to grant or continue her security clearance. Clearance is denied.

### **STATEMENT OF THE CASE**

On February 18, 2003, 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 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 clearance should be denied or revoked.

In a signed and sworn statement, dated March 12, 2003, Applicant responded in writing to the SOR allegations. She requested that her case be decided on the written record in lieu of a hearing. On July 2, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant had until August 14, 2003, to file a response to the FORM, but no response was submitted. The case was assigned to this Administrative Judge on September 4, 2003.

In the FORM, Department Counsel offered six documentary exhibits (Exhibits 1 - 6). No exhibits were offered by Applicant.

## **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B of the Directive because Applicant's immediate family members are not United States citizens and may be subject to duress. The SOR contains two allegations, 1.a. and 1.b., under Guideline B (Foreign Influence). In her response to the SOR, Applicant admits some of the allegations and denies some. Specifically she admits that her parents-in-law and siblings-in-law are citizens of Iran. She also admits that her parents-in-law have resident alien status in the United States. The admitted allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 47 years old. She was born in the United States and has been solely a United States citizen for her entire life. Her husband, whom she married in 1982, was born in Iran and became a naturalized United States citizen in 1981. Applicant and her husband have two children, who were born in the United States.

Applicant's parents-in-law are citizens of and reside part of the time in Iran. They have resident alien status in the United States, and they spend part of every year in the United States (Exhibit 3). They are now both retired, and neither of them ever worked in any capacity for the Iranian government (Exhibit 5). Applicant does not speak to her parents-in-law very often when they are in Iran, but she visits them regularly when they are in the United States, and they generally stay at the home of her and husband for approximately one or two months, when they come to the United States (Exhibit 5). Applicant's husband also has siblings who are citizens of and reside in Iran. No evidence was introduced as to their status regarding current or past employment with the government of Iran. There was also no information as to the frequency and nature of contacts with these siblings-in-law and Applicant.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

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.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2).

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:

### **FOREIGN INFLUENCE (GUIDELINE B)**

E2.A2.1.1. 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 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.A2.1.2. Condition 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 in, a foreign country;

E2.A2.1.3. Condition that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(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.

### **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence). Applicant's parents-in-law and siblings-in-law are citizens of and reside in Iran. The Iranian citizenship and residency of members of Applicant's family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet her burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001).

As Applicant's family members are citizens of Iran, a country which is undisputedly hostile to the Government of the United States, Applicant has a very heavy burden of showing that these family members do not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002).

The evidence of existence of immediate family members, who are citizens of Iran, comes within Disqualifying Condition (DC) E2.A2.1.2.1, immediate family members are citizen of, or resident in, a foreign country. Applicant's parents-in-law are now both retired, and neither of them ever worked in any capacity for the Iranian government. However, no evidence was introduced as to the status of Applicant's siblings-in-law regarding current or past employment with the government of Iran and the frequency and nature of their contacts with Applicant. Based on this overall record, I cannot conclude that her family is not in a position to be exploited by a foreign power. Accordingly, Foreign Influence Mitigating Condition E2.A2.1.3.1. does not apply to this case. After considering all of the evidence of record on these issues, I conclude that Applicant has failed to meet her burden of mitigation, thereby failing to demonstrate that it is clearly consistent with national security to grant her a clearance. Guideline B is found against Applicant.

**FORMAL FINDINGS**

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For 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 Applicant.

Martin H. Mogul

Administrative Judge