

KEYWORD: Foreign Influence

DIGEST: Applicant is a computer systems operator and systems analyst for defense contractors. He came to the United States from Iran in 1974 and returned only once in 1979. He became a naturalized United States citizen in 1982. His parents are elderly and live in Iran. He brought them to the United States 4 times to live, obtained benefits for them, but they returned to live in Iran. His sister is a citizen and resident of Iran. Applicant recently married an Iranian women who he did not meet until after they were married. Applicant refused to go to Iran and was married by proxy. Applicant has not met his heavy burden to establish he is not in a position to be forced to choose between loyalty to his immediate family in Iran and his loyalty to the United States. Clearance is denied.

CASENO: 03-22974.h1

DATE: 03/21/2005

DATE: March 21, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-22974

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

## **FOR GOVERNMENT**

Stephanie C. Hess, Esq., Department Counsel

## **FOR APPLICANT**

John T. Riely, Esq.

## **SYNOPSIS**

Applicant is a computer systems operator and systems analyst for defense contractors. He came to the United States from Iran in 1974 and returned only once in 1979. He became a naturalized United States citizen in 1982. His parents are elderly and live in Iran. He brought them to the United States 4 times to live, obtained benefits for them, but they returned to live in Iran. His sister is a citizen and resident of Iran. Applicant recently married an Iranian woman who he did not meet until after they were married. Applicant refused to go to Iran and was married by proxy. Applicant has not met his heavy burden to establish he is not in a position to be forced to choose between loyalty to his immediate family in Iran and his loyalty to the United States. Clearance is denied.

## **STATEMENT OF THE CASE**

On July 12, 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* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on July 14, 2004. The SOR alleges security concerns under Guideline B (Foreign Influence) of the Directive.

Applicant answered the SOR in writing on July 20, 2004 and admitted all the allegations under Guidelines B. He requested a hearing before an administrative judge and the request was received by DOHA on July 23, 2004. Department Counsel was prepared to proceed with the case on December 4, 2004, and the case was assigned to me on December 9, 2004. A notice of hearing was issued on January 5, 2004, and the hearing was held on February 10, 2005. Eight government exhibits, ten Applicant exhibits, and the testimony of Applicant and nine Applicant witnesses were received during the hearing. The transcript was received on February 22, 2005.

## FINDINGS OF FACT

Applicant is 58 years old and has been employed by a number of defense contractors as a computer systems engineer and analyst. Applicant was granted an interim security clearance in 1999. His final clearance was denied in April 2004 resulting in the SOR. Since Applicant did not have a security clearance, he was terminated by his defense contractor employer. <sup>(1)</sup> His employer will re-employ Applicant if he receives a security clearance. <sup>(2)</sup>

Applicant left his home country of Iran as a teenager in 1974 and went to Canada to further his education. He married a United States citizen who was a fellow student in Canada and became a permanent resident alien of the United States in 1975. He visited Iran in 1979 shortly after the Islamic Revolution and has not returned since then. Applicant became a naturalized United States citizen in 1982. <sup>(3)</sup> He has not had an Iranian passport since 1982 when he turned it in to become a United States citizen. <sup>(4)</sup>

Applicant and his first wife, a United States citizen not of Iranian decent, returned to the United States from Canada in 1978 to live and continue his education. He and his first wife adopted a son who was an Iranian citizen. The son lives in the United States with Applicant's first wife, is a permanent resident alien, and has applied for United States citizenship. Applicant was married to his first wife for 14 years.

After divorcing his first wife, Applicant married an Iranian born women who is a United States citizen. They were married for approximately two years and there were no children from this marriage.

After divorcing his second wife, Applicant married another Iranian women who was a United States citizen at the time. They were married for seven years and there were two children of this marriage who are United States citizens. <sup>(5)</sup>

Applicant married for the fourth time in September 2000. Applicant was introduced to his new wife, a citizen and resident of Iran, by a friend. Since Applicant and his wife were in different countries, they communicated by telephone, e-mail, and postal mail. After a time, they decided to marry but Applicant would not return to Iran. Even though they had never seen each other, Applicant married his wife in Iran by proxy. After the official marriage, Applicant and his wife met for the first time in Turkey so Applicant could submit the appropriate papers for his new wife to obtain a permanent resident alien card and a visa to enter the United States. After completing the paperwork, Applicant returned to the United States and his new wife returned to Iran. In November 2000, Applicant and his new wife met in Turkey again to complete the application process. Applicant's wife's visa was approved and she and Applicant's parents went to Turkey in April 2001, to meet Applicant and for all four to come to the United States together. Applicant's wife is a medical doctor, has been in the United States since 2001, is a permanent resident alien, and has applied to be a United States citizen. Her application is pending. She has not returned to Iran since she left in 2001. <sup>(6)</sup> Applicant's wife has a mother, brother, and sisters in Iran. <sup>(7)</sup>

Applicant's parents are citizens of and reside in Iran. His parents are both 86 years old and in poor health. Applicant brought his parents to the United States 4 times with the intent for them to live in the United States. He helped them obtain social security cards, open a bank account in a United States bank, and his father obtained a driver's license. Applicant also obtained health care for his parents in the United States. The parents were unable to assimilate into the United States culture and learn enough English to apply for and become citizens. They returned to Iran of their own accord.<sup>(8)</sup> Neither of Applicant's parents are agents of or employed by the Iranian government. Applicant talks to them approximately twice a month by telephone.<sup>(9)</sup> Applicant has informed his parents that he will not return to Iran for their funerals.<sup>(10)</sup>

Applicant has an older sister who is a citizen and resident of Iran, but also has status as a permanent resident alien of the United States. The sister has a son, Applicant's nephew, who is a United States citizen living with his family in the United States. Applicant has close ties to the sister's son and considers him almost like a son. The sister is not an agent or employee of the Iranian government. She was an elementary school teacher but is now at home with her husband. The Applicant last saw his sister in 1992 when she visited the United States. He talks to her by telephone approximately once a month.<sup>(11)</sup>

Applicant has a sister who is a citizen of Iran but resides in the United States. The sister has applied for United States citizenship, her application has been approved, and she is merely waiting to be sworn in as a United States citizen. Applicant's sister has two daughters who reside in the United States and are United States citizens.<sup>(12)</sup>

Applicant has worked for a number of defense contractors and is highly regarded by all of them. He has worked with sensitive and classified information while holding his interim clearance. There were no issues of security compromise while working for the defense contractors. Applicant has bank accounts in the United States, pays taxes in the United States, and owns his own house in the United States. He has no financial interests in Iran.<sup>(13)</sup>

Iranian ex-patriots, to include a lawyer, and a broadcaster for a United States Government agency, testified Applicant has spoken of his hatred for the Iranian government and his fidelity to the United States. They testified they do not trust the Iranian government. These individuals also testified as to their strong feelings and those of their ex-patriot countryman for the United States and their dislike of the Iranian government.<sup>(14)</sup> Applicant is not concerned that the Iranian government would exploit his immediate family members to have him compromise his loyalty to the United States because none of his family members in Iran know the nature of his job.<sup>(15)</sup> If approached by Iran, he states he would never compromise his position of trust.<sup>(16)</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>(17)</sup>

## POLICIES

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."<sup>(18)</sup> 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."<sup>(19)</sup> 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 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."<sup>(20)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(21)</sup> 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.<sup>(22)</sup>

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(23)</sup> 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(24)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(25)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(26)</sup> "[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."<sup>(27)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(28)</sup>

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

**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.

Conditions that could raise a security concern and may be disqualifying, as well as, those which would mitigate security concerns, pertaining to the adjudicative guidelines, are set forth and discussed in the conclusions section below.

## 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:

The government has established its case under Guideline B. Applicant's parents, sisters, wife, and the wife's immediate family members in Iran bring this matter under Foreign Influence Disqualifying Condition 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. <sup>(29)</sup> Applicant's parents, sisters, and wife are immediate family members. They are all citizens of Iran and the parents and one sister reside in Iran. There is a rebuttable presumption that a person has close ties of affection for, or obligation to, the immediate family members of the person's spouse. <sup>(30)</sup> There was no information presented to rebut the presumption, so there are close ties of affection or obligation to the wife's mother, sisters, and brother in Iran. I conclude the disqualifying condition has been established as to the parents and sister in Iran, the sister and present wife in the United States, and the wife's mother, sisters, and brother in Iran.

The Foreign Influence Mitigating Condition that must be evaluated is 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*). The hostility of Iran to the United States places a heavy burden upon Applicant to demonstrate the immediate family members in Iran do not pose security risks and he is not in a position to be forced to choose between loyalty to the United States and the family members in Iran. <sup>(31)</sup> There is no doubt Iran is a country whose government cannot be trusted and they would do anything they thought appropriate to gather information. There is no evidence Iran has targeted its citizens to obtain information from citizens in the United States. But, the federal government does not have to wait until there is specific proof of targeting by Iran of its citizens for there to be a security concern.

There is no doubt Iran could and would target its citizens in Iran to obtain information from people in the United States. Applicant's parents, sisters, wife, and the wife's immediate family members are not agents of a foreign government. The immediate family members in Iran are in a position to be exploited for information gathering by Iran. The sister and wife, since they are in the United States and almost United States citizens, are not in a position to be exploited by Iran. It still must be resolved if Applicant has established that the immediate family members in Iran can not be exploited in such a way as to force Applicant to chose between loyalty to all immediate family members in Iran and his loyalty to the United States.

The positive aspects for Applicant to show he cannot be compromised are he left Iran over 30 years ago and has only been back once, over 25 years ago. He became a United States citizen as soon as he could and surrendered his Iran passport and obtained a United States passport. He did not even return to Iran to be married. He has decided he will not return to Iran when his parents die. On the other hand, Applicant has married three Iranian women and even went so far as to marry his latest wife without actually meeting her. There are no factors established by Applicant to show the immediate family members of his wife are not a security risk under Foreign Influence Disqualifying Condition E2.A2.1.2.1. Applicant has shown his concern for his parents by bringing them 4 times to the United States to live no matter how unsuccessful. He obtained benefits for them in the United States to include social security cards, driver's license, medical care, and bank accounts. He talks to them frequently. He has ties of affection to his sister and talks to her frequently. He has even stronger ties to her son in the United States. The relationship between the sister and her son could be exploited by Iran and is a security concern. All of these factors show his affection for them and the possibility they can be exploited by Iran to have him compromise his loyalty to the United States. He has not raised any factors to mitigate concerns about his wife's family members in Iran.

There is no per se rule that a person born in Iran and now a United States citizen with immediate family members in Iran cannot be granted a security clearance. Applicant has demonstrated his close ties to the United States, to include his long term residence in the United States, his long term employment with defense contractors, his United States citizenship as soon as he could, his financial holdings and payment of taxes in the United States, and his ownership of property in the United States. Of particular note is Applicant's refusal to return to Iran for any purpose. However, there are also close ties to Iran and immediate family members in Iran. He married Iranian women, one by proxy. He has affection for his parents and his sister. He has not mitigated any concerns about his wife's family. Applicant has not met his heavy burden to establish that his close ties to immediate family members in Iran are not a security concern and that he cannot be forced to chose between his family in Iran and his loyalty to the United States. I conclude Applicant has not mitigated the foreign influence disqualifying condition concerning his immediate family members.

I carefully considered all of the circumstances in light of the 'whole person' concept for a fair, impartial, and commonsense decision. 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.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

### **DECISION**

In light of all of the circumstances presented in the record of 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. 137.
2. Tr. 111-112.
3. Tr. 115.
4. Tr. 123.
5. Tr. 168.
6. Tr. 83-93; Tr. 115-121.



7. Tr. 92. There is no evidence Applicant has ever met his wife's relatives. Applicant has never been to Iran since he was introduced to his present wife and there is no evidence the wife's relatives have been outside Iran.
8. Tr. 141-142. Applicant states his parents love the United States and wish they were younger and could be able to learn to live here.
9. Tr. 119-120.
10. Tr. 168.
11. Tr. 120-123; 156.
12. Tr. 70-74.
13. Tr. 35-36.
14. Tr. 46-60; Tr. 61-68; Tr. 100-106.
15. Tr. 144; Tr. 158; Tr. 166.
16. Tr. 160.
17. Government Exhibit 9 (US Department of State Background Note: Iran, Aug. 2004), at 6-7.
18. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
19. Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995).
20. Directive ¶ E2.2.1.
21. *Id.*
22. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
23. *See* Exec. Or. 10865 § 7.
24. Directive ¶ E3.1.14.
25. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
26. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
27. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).
28. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
29. Directive ¶ E2.A2.1.3.1.
30. ISCR Case No. 01-02452 (App. Bd. Nov. 21, 2002). Since the SOR alleges Applicant's wife is a citizen of Iran, there is fair notice to the Applicant of a security concern for the wife's immediate family members in Iran.
31. ISCR Cases No. 01-26893 (App. Bd. Oct. 16, 2002) at 8.