

DATE: November 8, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23259

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's mother and several sibling are citizen residents of Iran, as are his wife's mother and siblings. Applicant failed to mitigate foreign influence security concerns raised by the presence of his family members in Iran. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 8 September 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision<sup>(1)</sup>-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 23 September 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 12 May 2005. On 29 June 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 14 July 2005.

I held the record open to permit Applicant to submit additional documents. Without objection from the Department Counsel, I admitted the letter of recommendation Applicant submitted as Ex. A.

**FINDINGS OF FACT**

Applicant is a 58-year-old electrical engineer for a defense contractor. He has held a security clearance continuously since 1982. He has worked for his current employer for 25 years on many national security projects. He is now working on missile defense systems. He is well respected by his employer and his supervisors for his honesty and loyalty as a U.S. citizen.

Applicant was born and raised in Iran. He worked as an engine mechanic for the national airline and in 1971 traveled to the U.S. to get an education and learn more about airplanes. After his graduation, he traveled back to Iran for a short period of time before permanently immigrating to the U.S. He returned to Iran briefly in 1979, after the revolution, to

assist his U.S. employer in terminating a U.S. defense-related contract held with the pre-revolution Iranian government. In 1980, he traveled to Iran to marry an Iranian citizen. They have three children, all U.S. citizens by birth. Applicant and his wife became U.S. citizens in 1982 and 1988, respectively.

Applicant's mother still lives in Iran; his father is deceased. Applicant has three brothers who are citizen residents of Iran. All three are self-employed. He also has two sisters who are citizen residents of Iran. Both are homemakers. None of Applicant's family has visited him in the U.S. Applicant is trying to get his family members into the U.S. as residents. Since he became a U.S. citizen, Applicant has neither returned to Iran nor held an Iranian passport. His wife has traveled on occasion to Iran. Her last trip was in 2004 and she took two of the children with her.

On several occasions, Applicant sent money and medicine to his mother. He candidly acknowledges that he loves his mother and other family members in Iran.

Applicant's wife's mother, two brothers, and one sister are all citizen residents of Iran. The sister and her daughter visited Applicant and his family in the U.S.

Applicant does not own any assets in Iran and does not expect to inherit any property there. Applicant is looking forward to working overseas after his retirement so he can help repair some of the misunderstandings between the U.S. and other nations. He would like to work as an ambassador to a middle east country.

Since the 1979 revolution, Iran and the U.S. have been adversaries. Impediments to improved relations with Iran include Iranian efforts to acquire nuclear weapons and other weapons of mass destruction; its support for and involvement in international terrorism; its support for violent opposition to the Middle East peace process; and its dismal human rights record.

### 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

### CONCLUSIONS

In the SOR, DOHA alleged Applicant's mother, three brothers, and two sisters (¶ 1.a) and his wife's mother and two brothers (¶ 1.b) are citizen residents of Iran. Applicant admitted each of the allegations. A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The evidence established Applicant's mother, mother-in-law, siblings and his wife's siblings are citizen residents of Iran. It is a security concern and may be disqualifying for an Applicant to have immediate family members who are citizens or residents of, or present in, a foreign country. DC E2.A2.1.2.1. There is a rebuttable presumption that an applicant has

ties of affection for, or at least obligation to, his members of his wife's immediate family. ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002). While the mere possession of such families ties is not automatically disqualifying under Guideline B, it raises security concerns sufficient to require an applicant to rebut, extenuate or mitigate the concern and establish that it is clearly consistent with the national interest to grant him a clearance. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*\*33-34 (App. Bd. Fe. 8, 2001).

Security concerns raised by an applicant's foreign associates may be mitigated by showing they are not agents of a foreign power and are not in a position to be exploited by a foreign power in a way that could force the applicant to choose between loyalty to the person involved and loyalty to the U.S. MC E2.A2.1.3.1. The phrase "agent of a foreign power" is a statutory term of art defined in 50 U.S.C. § 1801(b). It includes "any person other than a United States person, who acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States." 50 U.S.C. § 1801(b)(1)(B). Applicant established that his foreign associates do not fit within that definition.<sup>(2)</sup> Nor are they "agents of a foreign power" with the Appeal Board's considerably broader definition-an employee of a foreign government.

In assessing the vulnerability to exploitation of Applicant's associates, it is helpful to consider several factors. Even friendly nations can have profound disagreements with the U.S. over matters they view as important to their vital interests or national security. We know friendly nations have engaged in espionage against the U.S., especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). The nature of a nation's government, its relationship with the U.S., and its human rights record are all relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign power has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

The evidence clearly established Applicant is a loyal, trustworthy U.S. citizen who loves his family. He has done nothing wrong. I gave significant consideration to Applicant's numerous ties with the U.S. and his 23 years of service to the U.S. Government through classified work for a defense contractor. Applicant insists he would report any foreign contacts and that he is not vulnerable to foreign coercion or influence. But the mitigating condition "hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather hinges on the concept that applicant should not be placed in a position where he is forced to make such a choice." ISCR Case no. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005). With so many family members in Iran, Applicant was unable to establish they are not in a vulnerable position.

As noted above, the decision to deny an individual a security clearance is not a judgment of an applicant's loyalty. Exec. Or. 10865 § 7. It is merely a determination the applicant has not met the strict guidelines set out by the President and the Secretary of Defense.

After carefully considering all of the evidence, I conclude Applicant did not mitigate the security concerns raised by his several family members who are citizens of or resident in Iran. I find against Applicant on ¶ 1.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

### **DECISION**

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

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), 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).

2. I am mindful of the fact the Appeal Board has not discussed the applicability of 50 U.S.C. § 1801(b) to DOHA cases. In fact, the Appeal Board's interpretation of "agent of a foreign power" seems to be inconsistent with the statutory definition. *See* ISCR Case No. 02-24254, 2004 WL 2152747 (App. Bd. Jun. 29, 2004) (holding an employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of MC 1). Although I am convinced 50 U.S.C. § 1801(b) defines "agent of a foreign power" for national security matters, including security clearance decisions, I am required to follow the Appeal Board's opinion. ISCR Case No. 03-16516 at 4 (App. Bd. Nov. 26, 2004).