

DATE: May 17, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24144

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Ronald R. Sparks, Jr., Esq.

SYNOPSIS

Given the hostility of Iran for the United States (U.S.), Applicant bears a heavy burden of demonstrating he is not at risk of being vulnerable because of his immediate family ties in Iran. Applicant has produced insufficient evidence to dispel the potential for adverse influence resulting from his ties to his mother, parents-in-law, and siblings-in-law in Iran. Clearance is denied.

STATEMENT OF CASE

On August 3, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued an SOR to the 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On August 30, 2004, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on November 10, 2004. On December 3, 2004, this case was set for hearing on December 20, 2004. The Government submitted three exhibits and Applicant submitted one exhibit. Testimony was taken from Applicant. The transcript (Tr.) was received on December 30, 2004. [\(1\)](#)

At the request of the Government, I have taken official notice of: (1) U.S. Department, Background Note: *Iran*, dated June 2004; (2) U.S. Department of State: *Patterns of Global Terrorism, 2003*; dated April 29, 2004 (p. 4, Iran); and, (3) U.S. Department of State, *Country Reports on Human Rights Practices - 2003*.

FINDINGS OF FACT

The SOR alleges foreign influence (Guideline B). Applicant admitted all factual allegations. Applicant's admissions shall be incorporated in the following Findings of Fact.

Applicant is 47 years old and has been employed as a project quality assurance official by his current employer (defense contractor) since December 2001. He seeks a secret security clearance.

Applicant was born in Iran in January 1957 to an American military father and an Iranian mother. In the first 18 years of his life, he spent varying amounts of time in both countries before deciding in 1976 to complete his education in the United States (U.S.) at the age of 18. After obtaining additional instruction in the English language, Applicant received a pre-engineering degree at a junior college in 1978. Applicant then enrolled at an American University and received a Bachelor's Degree in electrical engineering in April 1981. (GE 1)

Applicant's first marriage to an Iranian citizen in 1975 ended in divorce in 1984. He married his current wife, also an Iranian citizen, in 1984. She was naturalized as an American citizen in 1991. Applicant's two children, who were born in the U.S., are currently ages 14 and 11. While Applicant has held an interim security clearance from several employers since 1983, and other kinds of clearances according to his vitae, he held a Department of Defense (DoD) security clearance from 1990 to 1996. (GE 1) Between 1996 and March 2003, Applicant had no clearance while working for commercial employers and then took a position with his current employer where initially, he did not need a security clearance. Applicant reapplied for a security clearance in March 2003. (GE 1)

Applicant's mother, 70 years old, is a citizen of Iran currently residing in Iran. When Applicant provided his sworn statement (GE 3) in October 1985, he was contacting his mother about 10 times a year by phone. He testified his current contact is about 12 times a year. (Tr. 27; 41) Applicant's mother, who lives alone, retired from a medical librarian position approximately two years ago. She has visited Applicant twice in the U.S. with the last visit occurring in 1985. Applicant's mother was approached by the current regime because she was married to an American citizen (Applicant's father). She explained she was divorced and asked to be let alone. Applicant's father passed away in 1983.

+ Applicant's mother-in-law and father-in-law became U.S. citizens in the late 1990s. They alternate residing in the U.S. and Iran. When they are in the U.S., they reside with Applicant. (Tr. 28; 45) They are currently in Iran visiting a sick relative. According to Applicant's sworn statement (GE 3) dated October 1985, Applicant's current wife was speaking with her parents about once a month by telephone. Applicant's wife was receiving about \$800.00 a month from parents to pay for college. Applicant's mother-in-law is 66 years old and retired from the teaching profession while his father-in-law is 71 years old and retired as chief executive officer of a sugar cane business. (Tr. 29)

Applicant has limited phone and e-mail contact with his brother-in-law who is a resident citizen of Iran; Applicant's wife telephones him once a month. Applicant's brother-in-law, who is in his late 30s (Tr. 61), finished law school in Iran and engaged in indoor farming before coming to the U.S. where he lived with Applicant for about six months and considered opening a coffee or food shop. He returned to Iran in 2004 to finish his internship in family law (child custody cases). (Tr. 59) Applicant believes his brother-in-law will return to the U.S. and open some kind of food shop or work in international law (Tr. 59); should those career paths not be successful, then his brother-in-law will return to Iran to continue with his legal career. The wife of Applicant's brother-in-law works for a power company but Applicant is not certain whether the company is publicly or privately operated. (Tr. 48)

Applicant's sister-in-law, a dentist, is a citizen of Iran. In 1992, she applied for an U.S. immigration visa and was awaiting completion of the process. Applicant had limited e-mail and telephone contact with her while his wife talks to her about once a month. Applicant's sister-in-law is married to a medical doctor and they have two children. Applicant stated that in December 2004, they were invited to Turkey to complete paperwork processing for immigration to the U.S. According to Applicant, they have been in Turkey about a week.

Applicant has two cousins who are resident citizens of Iran. He last spoke to his cousins over three months ago. In their conversations, they talk about the family children, family health and other family issues. (Tr. 33) One cousin is about 50 years old and employed as a farmer while the other cousin is in her late 40s and a housewife. (Tr. 50) Applicant last saw both relatives in 1975. (Tr. 51)

Applicant indicated in his 1985 sworn statement he would contact the Federal Bureau of Investigation (FBI) if his

relatives were threatened. Except for his mother's encounter with the current regime in Iran for having married an American citizen, (2) neither Applicant's nor his wife's family have been involved in the current regime. Applicant is willing to bear arms in support of the U.S. (GE 3; Tr. 35)

Applicant's character evidence relative to his job performance is his resume which provides a chronological history of the his past work assignments, his certifications in an array of software products, and projects he participated. Applicant owns his home which he purchased in 1996. He has no property or financial interests outside the U.S. (Tr. 38) He spends his spare time working on his house and spending time with the family. (Tr. 61) Applicant voted in the last U.S. presidential election in November 2004; he has never voted in Iranian elections since coming to the U.S. in 1976.

Iran is a Middle East country that has a constitutional Islamic government. Relations between Iran and U.S. have been nonexistent since 1979 when the Islamic government overthrew the monarchy. Since 1979, the current government of Iran has become a leading sponsor of terrorism outside its borders while perpetuating a documented history of human rights violations inside its borders.

POLICIES

As set forth in the Directive, each personnel security decision must be based on the guidelines, the whole person concept and commonsense.

Burden of Proof

The Government has the burden of proving controverted facts by substantial evidence. After the Government meets its burden, an applicant has the ultimate burden of presenting evidence in refutation, extenuation, or mitigation that demonstrates it is clearly consistent with the national interest to grant or continue his or her security clearance. The hostility of Iran towards the U.S. places a heavy burden on Applicant to demonstrate her family ties with Iran do not pose a security risk. Any doubt concerning an applicant's security clearance access should be resolved in favor of national security. *Department of Navy, v. Egan*, 484 U.S. 518, at 531.

Foreign Influence

Security concerns may exist when an individual's immediate family, including cohabitants, and other persons to whom her or she 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.

CONCLUSIONS

Under the foreign influence guideline, a security concern may exist when an individual's immediate family or persons she may be bound by affection, influence, or obligation, are not citizens of the U.S., or may be subject to duress. Contacts with citizens of other countries or financial interests in other countries are relevant in security determinations if they make the individual vulnerable to pressure. Based on the first allegation of the SOR, Foreign Influence Disqualifying Condition (FI DC) 1 (E2.A2.1.2.1., *an immediate family member, or person to whom the individual has close ties of affection and obligation, is a citizen of, or resident or present in, a foreign country*). Applicant's mother falls within FI DC 1 because she is a resident citizen of a foreign country and is an immediate family member with close ties of affection to Applicant.

The remaining allegations of the SOR activate consideration of FI DC 2 (E2. A2.1.2.2. (*sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists*)). The foreign contacts through Applicant's wife (a dual citizen of the U.S. and Iran) that may exert influence on Applicant are parents-in-law, and siblings-in-law.

Having weighed the entire record, the government has established its case under Guideline B. As noted in Policies, once a case has been made under the disqualifying conditions, an applicant has a heavy burden of showing his family members living in Iran do not pose a security concern. ISCR Case No. 01-26983 (October 16, 2002)

FI Mitigating Condition (MC) 1 (E2.A2.1.3.1., *a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are agents of a foreign power or in a position to be exploited by as foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the U.S.*) has potential applicability to Applicant's mother because she is not an agent of a foreign power. However, Applicant admitted his mother had been approached by the current regime. Even though she is now 70 years old and retired from her career, she remains in a position of vulnerability that could be exploited. Accordingly, FI MC 1 does not apply and I find against Applicant under subparagraph 1.a. FI MC 3 (E2.1.3.3., *contacts with foreign citizens are casual and infrequent*) is not applicable to Applicant's mother because of Applicant's regular telephone contact even though Applicant last saw his mother in 1985. Moreover, the Appeal Board has held that contacts with an immediate family member in a foreign country raises a rebuttable presumption the contacts are not casual in nature. ISCR Case No. 00-0484, at p. 5 (App. Bd. February 1, 2002)

Applicant's parents-in-law fall under FI DC 2 because they share living quarters with Applicant for varying periods of time. While they are U.S. citizens and retired, at the present time they are in Iran within the physical reach of Iranian authorities, notwithstanding the apparent purpose of their trip. Their presence in Iran raises the potential for adverse foreign influence that could ultimately put Applicant in a position of choosing between loyalty to the parent-in-law and the U.S. I find against Applicant under subparagraph 1.b.

While Applicant's contacts with his siblings-in-law raises minimal security concern, Applicant's wife has at least monthly contact with both brother and sister. Even though Applicant's brother-in law is a U.S. citizen, he shares Applicant's dwelling when he is in the states. At the present time, Applicant's brother-in law has been in Iran since early 2004. And his sister-in-law is a resident citizen of Iran who is awaiting completion of the visa process that will allow her to move to the US. In conclusion, the potential exists for pressure being placed on his siblings-in-law through Applicant's wife to Applicant. It is Applicant's burden to show that these ties are not of a nature that could create a the potential for foreign influence. Applicant has not satisfied his burden.

The quarterly contact Applicant has with his two cousins raises no security concerns under the foreign influence guideline because the cousins are not within Applicant's immediate family. Second, the two cousins are not agents of a foreign power or in a position to be exploited in a manner that could force Applicant to choose between his cousins and the U.S. Subparagraph 1.e. is found for Applicant. The infrequency of contact removes them from positions of vulnerability even further.

My overall finding against Applicant under the FI guideline has also included a review of this case under the whole person concept.

FORMAL FINDINGS

Paragraph 1 (foreign influence, Guideline B): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. For the 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.

Paul J. Mason

Administrative Judge

1. The government exhibits shall be marked as "GE" followed by the number of the exhibit. Applicant's exhibits shall be marked as "AE" followed by the letter of the exhibit. Finally, the transcript shall be abbreviated as "Tr." followed by the page number.
2. No additional evidence was provided regarding the encounter Applicant's mother had with the regime.