

DATE: December 2, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-24125

**ECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn Antigone Trowbridge, Esq., Department Counsel

**FOR APPLICANT**

Heidi Olson, Esq.

**SYNOPSIS**

Applicant is an aircraft mechanic for a defense contractor. He was born in France before World War II and he and his sister are the only family members to survive the war. He worked in Aden (now Yemen) for British Airlines and then for the United States Army in Iran and Ethiopia. He was married to a Yemen citizen, but she divorced him and moved with their three children to Yemen in 1968. He came to the United States in 1972 and has not visited Yemen. Two of his three children now live in the United States. He has infrequent contact with his former wife and son in Yemen. He located his sister in France in 2001 but has little contact with her. He has infrequent contact with immediate family members in foreign countries and the immediate family members do not work for a foreign government. Clearance is granted.

**STATEMENT OF THE CASE**

On May 14, 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 June 9, 2004. The SOR alleges a security concern under Guideline B (Foreign Influence) of the Directive.

Applicant answered the SOR in writing on June 24, 2004. He admitted allegation 1 and 3 and denied allegations 2 and 4 in the SOR. He requested a hearing before an administrative judge. The request for hearing was received by the Defense Office of Hearing and Appeals (DOHA) on July 1, 2004. Department Counsel was ready to proceed with the case on September 3, 2004, and the case was assigned to me on October 20, 2004. A notice of hearing was issued on October 27, 2004. The hearing was held on November 17, 2004. Three Government exhibits, two Applicant exhibits and the testimony of the Applicant were received during the hearing. The transcript was received on November 29, 2004.

## FINDINGS OF FACT

Applicant is a 67-year-old aircraft mechanic for a defense contractor. He was born in France before World War II and lost all of his family, except a sister, during the war. His father was a British citizen from what was then called Aden and now is Yemen. His mother was German. Applicant was a French citizen with a French passport, because he was born in France. Applicant was raised in an orphanage in France after the war. In approximately 1959, Applicant moved to Aden, a British Protectorate, to work for British Airlines. He was a British citizen with a British passport since his father was British.

Applicant lived in Aden (Yemen) for approximately four years. He married a Yemen woman and shortly thereafter they left Yemen so Applicant could work for the United States Army as an aircraft mechanic in Addis Ababa, Ethiopia. Applicant and his wife had three children born in 1964, 1966, and 1968. Applicant's wife left him in 1968 and returned to Yemen taking the children with her. Applicant was transferred to Tehran, Iran by the United States Army to continue working as an aircraft mechanic and flight engineer. When the British left Aden, he had to return his British passport and had to apply for a Yemen passport. He did not go to Yemen to obtain the passport but sent his application by mail. Applicant's first wife divorced him when she returned to Yemen and obtained custody of the children. Applicant did not visit his children in Yemen and was only in Yemen for the four years. When the United States Army left Iran and because of the unrest in Yemen and Iran and the Applicant's work with the United States Army, the Army sponsored Applicant to come to the United States in 1972 to work as an aircraft mechanic. He is now married to a United States citizen and they reside together in the United States with their daughter.

Applicant had very little contact with his former wife, a retired phone company employee, and children in Yemen from 1968 until 1998. He heard from his former wife and children in 1998 when his daughter asked him to sponsor her entry into the United States. His youngest son followed his sister and Applicant sponsored his entry into the United States in 2000. His daughter and son are adults and reside together in the United States not far from Applicant. They are employed but Applicant does help them financially. He last talked to his wife four years ago when he was sponsoring his son to enter the United States. His other son resides in Yemen and works for a bank. He has not seen him since 1966 and has little contact with him. His two children who reside in the United States are presently on a visit to Yemen to see their mother and brother as part of the religious observance of Ramadan.

Applicant's sister is his only living relative after World War II. He was able to track her down and visited her in France in 2001. He has not had contact with her in approximately two years.

## 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 he 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. Directive ¶ E2.A2.1.1.

Applicant's former wife and his son in Yemen and his sister in France brings this matter under Foreign Influence Disqualifying Condition Directive ¶ E2.A2.1.1.1. (*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*). Immediate family members are *spouse, father, mother, sons, daughters, brothers, and sisters*. Directive ¶ E2.A2.1.3.1. Applicant's former wife and his son in Yemen and his sister in France are immediate family members residing in and citizens of a foreign country. I conclude that the disqualifying condition has been established.

The conditions that may mitigate this disqualifying condition are: Directive ¶ E2.A2.1.3.1. (*immediate family members 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 involved or the United States*); and Directive ¶ E2.A2.1.3.3 (*contact and correspondence with the foreign citizens are casual and infrequent*). Applicant has little contact with his former wife and son in Yemen. The last time he spoke to his former wife in Yemen was over four years ago. The last time he saw his son in Yemen was in 1966 and he only talks to him rarely. Neither the former wife or son work for the government. While his two other children are presently in Yemen, they are there on their own to visit family as part of a religious custom. Applicant and his sister were separated after World War II and did not see each other until 2001 when Applicant went to France to find her. Applicant has not talked to his sister in over a year. I conclude that Applicant has mitigated the disqualifying condition under Guideline B.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude that Applicant is eligible for access to classified information.

## FORMAL FINDINGS

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

Paragraph 1, Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge