

DATE: December 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00261

ECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a native of Iran, became a United States naturalized citizen in May 1984. A continuous resident of the U.S. since August 1979, he has a record of dedicated contributions to the U.S. defense effort and has held a security clearance since 1989. The potential Foreign Influence concerns presented by the Iranian residency and citizenship of his siblings are minimal given his very limited contact with his siblings, his demonstrated preference for the U.S. and democratic institutions and his disapproval of the Iranian government and its policies. Clearance is granted.

STATEMENT OF CASE

On March 3, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (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 the Applicant. ⁽¹⁾ DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Foreign Influence (Guideline B).

On March 12, 2004, Applicant, acting *pro se*, executed an Answer to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on June 8, 2004, and pursuant to formal notice dated June 10, 2004, a hearing was scheduled for July 6, 2004. Applicant and Department Counsel appeared as scheduled, but the hearing had to be continued to the following day when a court reporter failed to appear.

At the hearing held on July 7, 2004, the Government submitted one exhibit and called Applicant as an adverse witness. Applicant testified and submitted eight exhibits. At the request of the Government, administrative notice was also taken of several U.S. State Department documents: extracts from a publication *Patterns of Global Terrorism 2003*; Consular Information Sheet and Travel Warning for Iran; and *Country Reports on Human Rights Practices--2003* for Iran. Administrative notice was also taken of a Congressional Research Service issue brief for Congress titled *Iran: Current Developments and U.S. Policy* (July 25, 2003). A transcript of the hearing was received on July 20, 2004. ⁽²⁾

FINDINGS OF FACT

The SOR alleges Foreign Influence concerns because of the Iranian citizenship and residency of Applicant's brother and two sisters, and Applicant and his youngest sister's service in the Shah of Iran's Navy in the 1970s. In his Answer, Applicant admitted the foreign residency and citizenship of his siblings and his and his sister's service in the Shah's Navy before the "evil empire" took over, but he indicated his siblings have no knowledge of where he works or what he does for a living. Citing his possession of a Secret security clearance for 14 years and restoration of special access eligibility in 1999, Applicant maintained his allegiance is solely to the U.S. where he has lived for the past 25 years. Applicant's admissions are accepted, and incorporated as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 51-year-old expert in electromagnetics who has been employed in the defense industry since 1988. He has held various levels of security clearance since 1989 when he was first granted a Secret clearance. In his present position as a senior principal systems engineer for a defense contractor, he has held special access clearances as well as a Top Secret clearance. As of the hearing, he holds a Secret clearance and seeks his Top Secret. [\(3\)](#)

Applicant was born in Iran in July 1953 to resident citizens of that nation. His father was an officer in the Shah of Iran's Navy. The youngest of four children, Applicant pursued a career in the Shah's Navy on graduating from high school in 1970. In 1972, after six months of English language training, he was sent to the U.S. to attend a maritime academy. During his last year, he met his future spouse, a U.S. native citizen, while he was on a sailing trip to Bermuda for the academy.

On earning his bachelor of science degree in nautical science from the U.S. institution in 1977, he returned to Iran where he continued his naval service for the next two years. When the Shah's government was overthrown in 1979, Applicant was visiting his niece in the United Kingdom. Having enjoyed the freedoms afforded him when he was a student at the U.S. maritime academy, Applicant decided not to return to Iran. He entered the U.S. in August 1979 on a tourist visa with the intent of remaining permanently.

In September 1979, Applicant married the U.S. native he had met during his last year at the maritime academy. With the conversion of his visa from tourist to spouse, Applicant pursued his bachelor's degree in electrical engineering degree from a polytechnic institute in the U.S., working his way through school. In 1982, Applicant obtained his "green card" in the U.S., acquiring lawful permanent residency. While working for a company designing antennas in May 1984, Applicant became a U.S. naturalized citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the U.S. if required. So that he would be able to access frequency information needed for his work, Applicant applied for his first clearance, but was told after a lengthy personal interview that he was ineligible.

In February 1988, Applicant took a position as a senior electrical engineer with another defense contractor in a new geographic locale. In about January 1989, he was granted a Secret clearance for his duties and he has held at least that level of security clearance since then. He pursued a master's in business administration at a local college while working full time, earning his M.B.A. in March 1994. In April 1995, Applicant returned to work for his previous employer as he wanted to pursue a master's degree in electrical engineering at the same institution where he had earned his undergraduate degree. Shortly before he earned his M.S.E.E. in June 1997, the company was sold. Applicant relocated to his present locale, taking a job as a principal electrical engineer with his current employer.

In April 1998, Applicant was assigned to work on a military program where he was granted special access clearance. His special access was revoked and he was immediately removed from the program sometime that Fall because of his family members in Iran. Applicant appealed the decision in December 1998, pointing out that he made a conscious decision to leave Iran and make his home in the U.S. 19 years before, has not been back to Iran since, and has limited contact with his siblings (phone calls during holidays and birthdays). In July 1999, the U.S. military restored Applicant's eligibility for full, unconditional access to all special access programs under its cognizance. Since January 2000, Applicant has been involved in a special access program where pending the outcome of the DOHA adjudication, he will be nominated for Top Secret special access.

Following the terrorist attack of September 11, 2001, Applicant volunteered his services to the U.S. military where he felt his knowledge of the navigable waters in the Persian Gulf and of the Farsi language could be an asset for the U.S. He was told he was ineligible for a military commission due to his age.

During his tenure at the company, Applicant has consistently performed as an exemplary employee with respect to engineer competence, interpersonal relationships, and adherence to security procedures. He provides a critical role in the leadership and development of an early warning system for a military fighter aircraft. In 2003, he was awarded a corporate award for an innovation currently under review for U.S. patent protection. An estimated \$2,000,000 per year is expected to be saved during the production phase of the program because of Applicant's creative engineering. Applicant's coworkers consider him trustworthy, loyal to the U.S., and very security conscious. His strong contributions have been rewarded with a promotion in May 2004 to the senior technical ranks within the company. While working full-time for his current employer, he earned his master's degree in systems engineering awarded May 2004.

Applicant's four siblings (brother age 57 and sisters ages 63, 60, and 54) are resident citizens of Iran as of July 2004. His brother is a dentist in private practice. His brother's spouse, a homemaker, has lawful permanent residency status ("green card") in the U.S. as her mother is a U.S. citizen who plans on sponsoring her daughter and son-in-law's immigration to the U.S. Applicant has not seen his brother since 1979. Applicant's oldest sister is a retired teacher whose daughter emigrated from Iran to Canada seven years ago. This sister and her husband (a banker) have applied to immigrate to Canada. Applicant visited with this sister in Canada two or three years ago when she was stayed with her daughter. Applicant's middle sister is a retired nurse ill with cancer. Applicant's youngest sister, who resigned from the Iranian Navy in 1980 or 1981 to become a homemaker, is estranged from her siblings over a dispute involving their mother's estate.

Applicant denies any emotional or financial ties to his siblings in Iran. He has contact with his brother and the two oldest sisters a couple of times per year (generally the New Year's holiday and birthdays). They are aware he has an engineering degree but do not know whom he works for or the nature of his work. In the event of any undue pressure or coercion being placed on his siblings in Iran, Applicant indicates he would go directly to his company's security officer and report it.

Applicant has not traveled to Iran since he left in August 1979, not even returning on the death of his mother. He has some desire to visit her grave in Iran to pay his respects, but would travel there only if Iran had a democratic form of government and he could enter on his U.S. passport. He has no foreign investments while he owns a home in the U.S. valued at about \$400,000 and a 401K retirement account with \$200,000 in assets. Applicant is willing to bear arms for the U.S. over any country, including Iran.

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 judgment, 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.

Enclosure 2 of the Directive sets forth personal 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 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, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).*

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.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

Foreign Influence

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 create the potential for foreign influence that 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. Conditions 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 or present in, a foreign country;

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

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 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;

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to Guideline B:

Under the Foreign Influence guideline, a security concern may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she is 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. In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the Administrative Judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service.

The Government has established a *prima facie* case under Guideline B (*see DC E2.A2.1.2.1*). Applicant's siblings are resident citizens of Iran, a country with hostile relations with the U.S. since the overthrow of the Shah in 1979. The U.S. does not currently have diplomatic or consular relations with the Islamic Republic of Iran and the U.S. considers Iran to be a state sponsor of terrorism. With Iran continuing to commit numerous, serious human rights abuses, Applicant bears a heavy burden of showing that the presence of family members in Iran does not pose an unacceptable security risk.

The security concerns engendered by the foreign residency and/or citizenship of close family members may be mitigated where it can be determined that the 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 applicant to choose between loyalty to the person(s) involved and the U.S. (*see* E2.A2.1.3.1.). Applicant's brother is a dentist in private practice; the oldest sister is a homemaker; the middle a retired nurse; and the youngest a homemaker since about 1981. There is no evidence these family members are agents of a foreign power. While Applicant, his father, and the youngest of his three sisters, all served in the Navy in Iran, it was under a constitutional monarchy friendly to the U.S., as evidenced by the foreign Navy sending Applicant to the U.S. maritime academy for his education in nautical science. While his sister continued to serve after the fall of the Shah in February 1979, it was only for a brief period.

The analysis does not end with a determination that Applicant's relatives are not agents of a foreign power. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non coercive means of influence being brought to bear on, or through the foreign relations. Applicant's brother and his wife (who has permanent residency status in the U.S.) are hoping to immigrate to the U.S. under the sponsorship of her mother, who is already a U.S. citizen. Applicant's oldest sister is pursuing Canadian citizenship. Yet, as long as they remain subject to the laws of the Islamic Republic and within with the physical reach of Iranian authorities, the risk of undue foreign influence being placed on them cannot be completely ruled out. The issue is whether Applicant can be counted on to fulfill his fiduciary obligations to the U.S. government should pressure be placed on one of his siblings in Iran.

Applicant has indicated that in the event of any undue pressure or influence being brought to bear on family members, he would immediately report the contacts to the appropriate authorities. The DOHA Appeal Board has consistently held that a statement of intention about what an applicant will do in the future under some hypothetical set of circumstances is not entitled to much weight, unless there is record evidence that the applicant has acted in an identical or similar manner in the past under identical or similar circumstances. *See* ISCR Case No. 99-0501 (December 19, 2000); ISCR Case No. 01-26893 (October 16, 2002). Several factors lead me to conclude that Applicant can be trusted to place his obligation to the U.S. government ahead of any sense of loyalty or obligation to his siblings. Applicant does not have especially close bonds with his siblings. He provides them no financial support and speaks with his brother and the two older sisters a couple times per year at most. He has no contact at present with the sister closest in age to him. Applicant has not seen his brother since he left Iran in August 1979. Applicant has not returned to Iran even on the death of his mother (*See* MC E2.A2.1.3.3. *Contact and correspondence with foreign citizens are casual and infrequent*). Applicant has not shared with his siblings the nature of his work or the identity of his employer.

Weighing heavily in Applicant's favor is his high-level of commitment to the U.S., forged initially when he attended the maritime academy in the 1970s and strengthened over the years. Since immigrating to the U.S. at the age of 26, Applicant has earned three master's degrees, and used this education to the considerable benefit of the U.S. defense effort. He has held a security clearance since 1989 without adverse incident. Those who have worked with him have no reservations about his trustworthiness or ability to handle classified information. The ties that bind are firmly rooted in the U.S. In addition to his professional career, his financial interests (house and retirement investments) are in the U.S. Applicant is married to a native-born U.S. citizen. Foreign travels have been on his U.S. passport. After the September 11, 2001 terrorist attacks, he offered his considerable talents to the U.S. military only to be turned down because of age. After weighing the record evidence as a whole, it is my common sense determination that Applicant's connections to Iran do not pose an unacceptable security concern or risk of foreign influence.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

DECISION

In light of all 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.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. In August 2004, I was informed by Department Counsel that Applicant was concerned about some errors in the transcript. No proposed corrections were submitted by the parties.
3. Applicant testified he held a Top Secret clearance for his duties until it was recently revoked. (Tr. 84)