

DATE: May 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09983

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

Erin C. Hogan, Esq., Deputy Chief Department Counsel

FOR APPLICANT

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SYNOPSIS

Applicant has been married for 30 years to an Iranian who is a dual citizen of the U.S. and Iran. She has a claim against the government of Iran for \$15-\$20 million for property seized from her family when the Shah fell from power in 1977. She has traveled to Iran six times in the past nine years to press the claims. Financial involvement is significant and not mitigated. Applicant's wife has two half sisters in Iran with whom she has little contact and that allegation is mitigated. Applicant mitigated his failure to report certain financial actions and delinquencies on his SF 86 through a misunderstanding but voluntarily detailed them in two subsequent investigative reports. Clearance denied.

STATEMENT OF THE CASE

On September 1, 2004, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated September 23, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on January 10, 2005. A Notice of Hearing was issued on February 3, 2005, and the hearing was held on February 25, 2005. The Government introduced eleven exhibits at the hearing and the Applicant introduced none. All were accepted into evidence. The Applicant testified on his own behalf. By agreement of the parties, the SOR Par. 2.a.1. was found to be mitigated at the hearing. The transcript was received on March 8, 2005.

FINDINGS OF FACT

Applicant has admitted all the factual allegations pertaining to foreign influence under Guideline B and the principal allegations as to personal conduct under Guideline E with denial and explanatory information as the specific allegations under E. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 66-year-old owner and CEO of a software company that holds defense contracts with the intelligence community and logistics agencies. They also do unclassified work for civilian government agencies. He organized his company in 2000 and now has seven employees. All of those who perform intelligence work hold security clearances. The company grosses between \$1.5 and \$2 million per annum. Applicant has not held a security clearance since 1978 and as the owner and CEO, he has not been required to hold a clearance until the events of 9/11. He is now required to hold a clearance if the facility is to be cleared unless he obtains a special security agreement as if the company was foreign-owned.

In 1974 applicant married a citizen of Iran who was then working for the Royal Embassy of Iran in Washington. They had met in Iran a few years earlier when both were working in the American Embassy in Tehran. Their daughter was born in 1977, and his wife left her employment in the embassy before the government changed when the Shah of Iran was deposed. His wife's father was a close advisor to the Shah and deputy head of the State Police. When the Shah was overthrown, the family's extensive assets were confiscated. Applicant's wife's parents emigrated to the U.S. and

have since died. Applicant's wife and her four sisters and one brother all of whom live in the U.S., have been engaged in a long but unsuccessful effort since their departure from Iran to obtain compensation from the government of Iran for the confiscation. Applicant's wife has traveled to Iran six times in the past nine years to press the claims on behalf of the family working with local lawyers in Iran. The estimated value of the properties is in the \$15 million to \$20 million range.

Applicant's wife traveled to Iran using her Iranian passport as she is a dual citizen. She stayed in Iran approximately two weeks on each of her trips. She has no immediate plans to return as she now sees little likelihood of success absent a change of government. Applicant has never traveled with her on her trips. Applicant's wife also has two older half-sisters who were children of her mother from a first marriage. They are citizens of, and live in, Iran part of the time and with whom Applicant's wife has only occasional contact and they are not claimants for the confiscated property since they are not heirs of Applicant's father-in-law.

Applicant failed to report certain financial delinquencies on his application for a security clearance (SF 86) filed electronically January 31, 2002, (Exh. 1) A signed copy of the document could not be located either by Applicant or the government. Two statements were taken from Applicant in February and October, 2002, in which he detailed the financial problems and facts surrounding them (Exhs. 2 and 3).

The delinquencies grew out of four financial transactions that occurred before Applicant founded his company and had some financial and family health problems. The first was from the sale of his home in 1987 and the failure to report a state tax lien arising therefrom was agreed by the government to have been mitigated. (SOR Par. 2.a.1.) The second transaction was the receipt of a finders fee of \$100,000.00 for a corporate acquisition and the resultant tax that was owed by Applicant to both the Federal and state governments. Applicant reported the income on his 1995 1040 tax return but could not pay the tax in full. He was making payments to both governments on a payment schedule at the time of filing his SF 86 so did not consider that he was delinquent. He failed to report that a tax lien had been filed by the state in 1988 and released in 1999 and that he had been 180 days delinquent during the past seven years. (SOR Par. 2.a.2., 2.b.1., and 2.b.3.).

The third transaction was for a medical bill incurred in 2000 for \$2,000.00 which he believed should have been covered by insurance and was negotiating with the insurance carrier. At the time of filing his SF 86 in January, 2002, Applicant had started to make payments on the account so did not regard it as delinquent. The fourth transaction involved a claim resulting in a judgment in 1997 for a landlord for damages to property. The matter was settled a year later in 1998. He neglected to report it on his SF 86 as a civil court action in the past seven years. Applicant detailed all of the financial issues and the factors surrounding them in two separate statements to investigators in February and October 2002.

Applicant served three years on active duty with the Navy and in the reserves for several years both before and after his active duty. He worked as a civilian employee for the Navy between 1964 and 1971.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential

for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The applicable Guidelines in the SOR concerning Foreign Influence-Guideline B provides as a Disqualifying Conditions (DC) that a security risk may exist when an individual's immediate family members are citizens of a foreign country.(E2.A2.1.2.1.), or that the individual has a substantial financial interest in the ccountry that could make the individual vulnerable to foreign influence. (E2.A2.1.2.8.) Such facts could create the potential for foreign influence that could result in the compromise of classified information. Such security concerns could be mitigated by a determination "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 individual to choose between loyalty to the person(s) involved and the United States." (E2.A2.1.3) Possible mitigating conditions (MC) that might be applicable are a determination that the immediate family members would not constitute an unacceptable security risk. (E2.A2.1.3.1), or that contact and correspondence with foreign citizens are casual and infrequent (E2.A2.1.2.3.), or that foreign financial interests are minimal and not sufficient to affect an individual's security responsibilities. (E2.A2.1.3.5.)

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and

demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

While Applicant presents a logical argument that, but for the fact that 30 years ago he married a woman from Iran when that country was an ally of the U.S. and now it is not, he would have no security problems, the fact remains that the times have changed in the past 30 years and his wife is now pressing a significant claim against a hostile government. She has traveled frequently on behalf of herself and her siblings to press the claims and has had negotiations through counsel to obtain relief. Applicant has made a reasonable argument that his wife would not pressure him to do anything to breach security and he would not do so even if she did, the possibility remains that it could happen particularly in view of the magnitude of the financial interest represented in the claim.

However, his wife's contacts and relationship with her two older half-sisters living in ,and citizens of, Iran are sufficiently casual and infrequent that justifies a finding that the allegation concerning them has been mitigated.

Allegations regarding Personal Conduct-Guideline E raise issues of conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. (E2.A5.1.1.) An unfavorable security clearance action will normally result from a refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination. (E2.A5.1.1.2.)

Conditions that could raise a security concern and may be disqualifying also include the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities. (E2.A5.1.2.2.) Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail. (E2.A5.1.2.4.)

Conditions that could mitigate these security concerns include the fact that the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. (E2.A5.1.3.5.), and that the falsification was an isolated incident, not recent, and the individual has subsequently provided correct information voluntarily. (E2.A5.1.3.2.) In this matter it appears that he provided the full and complete information in two investigative interviews after filing his SF 86.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. In view of the Applicant's professional career and his testimony, I conclude that the omissions were not "deliberate" as required by the guideline and, applying the whole person concept, that the allegations under this guideline have been mitigated.

However, after considering all the evidence in its totality and as an integrated whole on both guidelines, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph I Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2 Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

DECISION

After full consideration of all the facts and documents 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. Clearance is denied.

Charles D. Ablard

Administrative Judge