

DATE: June 9, 2005

In re:-----

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10954

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Richard L. Bischoff, Esq.

William S. Aramony, Esq.

SYNOPSIS

Applicant is married to a naturalized U.S. citizen who was born in Iran of Iranian parents. Her father and brother are Iranian citizens, and her father still lives in Iran. After several years of estrangement, Applicant's wife has re-established a bond with her father and he visited the couple in the U.S. in 2003. Applicant's father-in-law was employed by, and now consults for, the National Iranian Oil Company, a sub-company of the Iranian Oil Ministry. Applicant failed to mitigate foreign influence security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) or continue a security clearance for Applicant. On 6 May 2004, DOHA issued a Statement of Reas⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 19 May 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 10 March 2005. On 12 April 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 28 April 2005.

FINDINGS OF FACT

Applicant is a 48-year-old naturalized U.S. citizen who works as a software engineer for a defense contractor. He obtained a security clearance in 1985 while working on a government sponsored research project. He also obtained a security clearance in 1991-92 while working part-time at a U.S. Government facility. From 1997-2001, he worked in Croatia on a Department of State sponsored contract. When he returned from Croatia, he returned to work on a contract at a U.S. Government facility and was granted an interim clearance that was revoked when the SOR was issued. His supervisors, co-workers, and government officials uniformly praise Applicant as an honest, dependable, and dedicated employee whose work has had a significant affect on the national defense.

Applicant was born in Hungary in 1956. Later that year, his parents, Hungarian citizens, fled after the Soviets put down

the Hungarian uprising. After a short stay in Austria, the family immigrated to the U.S. Applicant became a naturalized U.S. citizen in 1967 when he was 10 years old.

Applicant is married to H, a naturalized U.S. citizen. H was born in Iran of Iranian parents. Her father is a lawyer who specializes in international oil contracts for the National Iranian Oil Company. H left Iran in 1973. After a stay in Great Britain, she came to the U.S. to study. She met Applicant in 1978 at college and they married in December 1986. They have one son who is 15 years old. H became a U.S. citizen in 1999.

H has seven siblings. One sister lives in Sweden and another in Canada. The other five are in the U.S. Three are U.S. citizens. Her youngest sister graduated from law school in the U.S. and is now practicing law. She is still a citizen of Iran, but has applied for political asylum in the U.S. H's brother is a computer scientist. He is a permanent U.S. resident and will apply for U.S. citizenship when he is eligible.

After the 1979 revolution in Iran, H's father was forced to resign from his position. In the early 1980s, leaders of the National Iranian Oil Company realized they had no one with his expertise, so they rehired him to work on international oil contracts. He is now retired, but still works as a consultant to the National Iranian Oil Company.

H's mother died in 1995. Her father has since remarried. He is still a citizen resident of Iran.

Applicant has very little contact with H's father. H's father did attend Applicant's wedding to H in the U.S. in 1986. He also visited them every three years until their estrangement. About ten years ago, H and her father had a falling out. There was little if any contact between them. They have since reconciled and H's father visited her in the U.S. for three days in 2003. Since then they have been in contact about every three months by telephone and a couple of times by e-mail. She admits she still loves her father and their reunion a couple of years ago was quite emotional.

The U.S. broke relations with Iran in 1980. Iran is the most active state-sponsor of terrorism, is trying to acquire nuclear weapons and other weapons of mass destruction, and has a dismal human rights record. Ex. 3 at 5; Ex. 6 at 2, 3. The National Iranian Oil Company is a sub-company of Iran's Ministry of Petroleum. *Ministry of Petroleum, Islamic Republic of Iran*, <http://www.nioc.org/subcompanies/index.asp> (accessed Jun. 8, 2005).

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 maintains contact with his father-in-law who is a citizen resident of Iran (¶ 1.a); his father-in-law is a retired attorney for the National Iranian Oil Company who is now a consultant to the company (¶ 1.b); and his brother-in-law is an Iranian citizen residing in the U.S. Applicant admitted each of the allegations in his Answer. 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.

It is potentially disqualifying under Guideline B for an applicant to have family members, or other persons to whom he has close ties of affection or obligation, who are citizens or residents of a foreign country. DC E2.A2.1.2.1. The Government has alleged Applicant has close ties of affection or obligation to his father-in-law and brother-in-law. (2) Applicant's father-in-law is a citizen resident of Iran. Applicant's brother-in-law is a citizen of Iran, but resides in the U.S. as a permanent resident who will apply for citizenship as soon as he is eligible. There is a rebuttable presumption that an applicant has ties of affection, or at least obligation, to members of his wife's family. ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Applicant failed to rebut the presumption.

It is also potentially disqualifying under Guideline B for an applicant to have an associate who is "connected with a foreign government." DC E2.A2.1.2.3. Applicant's father in-law is connected with the government of Iran by working for, and now consulting with, the National Iranian Oil Company.

As the evidence established potential disqualifying conditions, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. The security concerns raised by Applicant's foreign associates may be mitigated when it is determined they (1) are not agents of a foreign power and (2) are not 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 and loyalty to the U.S. MC E2.A2.1.3.1. Applicant failed to establish either.

The term "agent of a foreign power" is not defined in the Directive. Although the Appeal Board has not defined the term, it has issued decisions explaining it. "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 Foreign Influence Mitigating Condition 1." ISCR Case No. 02-24254, 2004 WL 2152747 (App. Bd. Jun. 29, 2004).

Applicant's father-in-law is an attorney who was employed by, and now consults for, the National Iranian Oil Company, which is a sub-company of Iran's inistry of Petroleum. <http://www.nioc.org/subcompanies/index.asp>. I conclude that, under the prior ruling of the Appeal Board, Applicant's father-in-law is an "agent of a foreign power" within the terms of MC E2.A2.1.3.1. (3)

In assessing whether an associate is in a position to be exploited by a foreign power, it is helpful to consider several factors, including the character of the nation involved and the totality of his ties to that nation. 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). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members or associates are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is linked with or dependent upon the government, the country has a poor human rights record, or the country is known to conduct intelligence operations against the U.S.

Applicant's father-in-law is subject to coercion and exploitation by the Iranian government which has a dismal human rights record. Any retirement pay and his consulting business would be subject to the whims of the Iranian government. On the other hand, Applicant's brother-in-law is a permanent resident of the U.S. and appears beyond the reach of the Iranian government.

It is also mitigating if an applicant's contacts with foreign associates are casual and infrequent. *See* MC E2.A2.1.3.3. Applicant has little contact with his brother-in-law and father-in-law and such contacts are casual.

Applicant claims that nothing has changed in his situation since he last held a security clearance, except for the better. Tr. 72. His wife has become a U.S. citizen since his last security clearance. But, the government is not estopped from making an adverse clearance decision when there have been prior favorable adjudications. ISCR Case No. 01-24504 at 3

(App. Bd. Feb. 11, 2003).

Security clearance decisions are not an exact science, but rather are predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances. *See Egan*, 484 U.S. at 528-29. It 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 the evidence in this case and evaluating Applicant's situation in light of the adjudicative process factors in Directive ¶ E2.2.1, I conclude Applicant failed to mitigate foreign influence security concerns raised by his father-in-law being a resident citizen of Iran who is an agent of that country.

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

Subparagraph 1.c: For 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) and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).
2. The Government did not allege Applicant's sisters-in-law, who are not U.S. citizens, raised a security concern.
3. The phrase "agent of a foreign power" is a statutory term of art defined in 50 U.S.C. § 1801(b). It does not include a person who is simply employed by a foreign government, such as Applicant's father-in-law, unless they are so employed in the U.S., or they are engaged in intelligence gathering or terrorism. However, the Appeal Board has not discussed the applicability of 50 U.S.C. § 1801(b) to DOHA cases. 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).