

DATE: December 5, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-11242

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq. Department Counsel

**FOR APPLICANT**

Pro Se

**SYNOPSIS** Applicant is a 51 year-old naturalized United States citizen, born in Iran. He moved to the United States in 1971 and became a naturalized United States citizen in 1984. Applicant's wife, sister and brother-in-law are Iranian citizens. They now reside in the United States and are in the process of becoming United States citizens. Because of his strong attachment to the United States and because his family is not in a position to be exploited in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States, he is not vulnerable to foreign influence. Applicant's failure to give complete information to the Government was due to computer error, not an attempt to mislead the Government. Clearance is granted.

**STATEMENT OF THE CASE**

On February 7, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on April 14, 2003. Applicant requested a clearance decision based on a hearing record.

On July 30, 2003, this case was assigned to me to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on September 9, 2003, and the hearing was held on September 30, 2003.

At the hearing, Department Counsel offered four documentary exhibits (Exhibits 1 - 4) and no witnesses were called. Applicant offered three documentary exhibits (Exhibits A - C) and offered his own testimony. After the hearing, the record was left open. Department Counsel offered two documentary exhibits, a Security Clearance Application (SCA) of Applicant from July 1985, consisting of 3 pages, and a statement of Applicant, dated November 1985, consisting of five pages (Exhibits 5 and 6). Applicant offered two documentary exhibits, a letter from his facility security officer, and

a Receipt for Application for Naturalization, each consisting of one page (Exhibits D and E). There were no objections to any of the documents, and they have been entered into evidence. The transcript (Tr) was received on October 15, 2003.

At the hearing, Applicant indicated that his last name was not been spelled correctly on the SOR. The SOR was amended to reflect the correct spelling, and this decision also reflects that correction.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B of the Directive (Foreign Influence) and Guideline E (Personal Conduct). In his response to the SOR, Applicant admits the three allegations under Guideline B (1.a., 1.b., and 1.c.), and he denies the allegations under Guideline E (2.a., 2.b., and 2.c.).

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following findings of fact:

#### **Guideline B (Foreign Influence)**

Applicant is a 51 year old employee of a defense contractor. He was born in Iran in 1951, moved to the United States in 1970, and became a naturalized United States citizen in 1984. He first came to the United States to pursue an education. He has received Masters Degrees in nuclear engineering and quality assurance and management, and he will soon be receiving a Ph.D. degree,

all from United States universities. He has held a security clearance without interruption since 1986.

Since Applicant emigrated to the United States, he traveled to Iran on one occasion in 1979 (Tr at 51).

Applicant's wife is an Iranian citizen, who has lived in the United States for approximately 12 years and is in the process of becoming a United States citizen. At the time of the hearing, Applicant's wife was pregnant with their first child.

Applicant's older sister, brother-in-law, and their daughter are citizens of Iran. They reside in a home that they purchased in the United States, and all three are in the process of becoming United States citizens. Neither his sister or brother-in-law ever worked for the Iranian government (Tr at 32-33). Applicant's younger sister and brother are citizens of and reside in the United States (Tr at 33, 34).

Applicant testified that he has voted in every election since he became a naturalized United States citizen (Transcript at 44). When he was given the hypothetical question as to what he would do if the Iranian Government threatened his family if he did not cooperate, Applicant testified that he would never betray the United States (Tr at 56, 57). Since there has been no actual set of circumstances that occurred similar to the hypothetical fact pattern, I can not give his statement a great deal of consideration. ISCR Case No. 02-26826 (November 12, 2003). However, I believe that his testimony was credible.

#### **Guideline E (Personal Conduct)**

When Applicant completed a signed, sworn SCA on August 10, 2000, he failed to list information on question #9 concerning his sister and her husband who, at the time, were citizens of and resided part time in Iran.

When Applicant completed a signed, sworn SCA on December 20, 2001, on question #9, he only furnished his younger sister's address in the United States as the address to contact his older sister, who still resided part time in Iran. Applicant testified that his older sister and her husband had sold their home in Iran, and the only address he could furnish for her at that time was that of his younger sister in the United States.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security

eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed

whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **Guideline B (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 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. Condition 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 in, a foreign country;

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

E2.A2.1.3.1. A determination that the immediate family member(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;

### **Guideline E (Personal Conduct)**

E2.A5.1.1. *The Concern:* 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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

E2.A5.1.2. Condition that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, falsification or misrepresentation 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.A5.1.3. Condition that could mitigate security concerns include:

E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such

factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

**CONCLUSIONS** Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines B and E:

### **Guideline B (Foreign Influence)**

Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of foreign influence. Applicant's immediate family members including his wife, sister, and brother in-law are citizens of Iran. The Iranian citizenship of members of Applicant's immediate family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001).

As Applicant's immediate family members are citizens of Iran, a country which is undisputedly hostile to the Government of the United States, Applicant has a very heavy burden of showing that these family members do not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002).

The evidence of existence of immediate family members, who are citizens of Iran, comes within Disqualifying Condition (DC) 1. However, I have also considered the following: Applicant's wife, sister, and brother-in-law now reside in the United States, and all three are in the process of becoming United States citizens; there has been no Iranian government involvement of Applicant's family members; he has no immediate family members who will be residing in Iran; Applicant has established a successful career and family since coming to the United States more than 30 years ago; and he gave extremely strong testimony about his feelings concerning the United States and what he would do if faced with a threat from a foreign government. Based on the nature of this overall record, I have determined that his family members do not constitute an unacceptable security risk, and Mitigating Condition (MC) 1 applies. Guideline B is found for Applicant.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it, and would report the incident to the proper authorities.

### **Guideline E (Personal Conduct)**

With respect to Guideline E, the evidence establishes that Applicant provided incomplete information to the Government in response to one question on the SCA that he executed in August 2000, and one question on the SCA that he executed in December 2001.

I conclude that Applicant did not knowingly provide untruthful or incorrect information. Applicant testified that, because of the software he was using, he had considerable difficulty inputting information into the computer to complete these SCAs, and that was the reason for the incomplete information (TR at 35-29). For the following reasons, I conclude that this explanation is reasonable: A letter from Applicant's Facility Security Officer confirmed that Applicant had problems with the software for inputting his SCA (Exhibit D), and in an earlier statement, made in 1985 to the Defense Security Service, Applicant had already identified that his mother and two sisters resided in Iran (Exhibit 5).

Finally, on the SCA, Applicant did not even identify his brother and other sister, who reside in and are citizens of the United States. This information benefits Applicant, and there would be no reason for him not to include this information, but for his difficulties with the software.

I resolve Guideline E for Applicant.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I conclude that no DC applies because the incomplete information that Applicant provided in his SCA was not made wilfully.

Accordingly, Applicant has mitigated the security concerns, thereby demonstrating that it is clearly consistent with national security to grant him a security clearance.

### **FORMAL FINDINGS**

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant Subparagraph 2.b.: For 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.

Martin H. Mogul

Administrative Judge