

DATE: July 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11574

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Richard Murray, Esq.

SYNOPSIS

Applicant mitigated concerns of Foreign Influence created by presence of a mother and three sisters in Iran all of whom are citizens of Iran, by the facts and evidence produced. Applicant left Iran at age 15 for high school and university in London. He came to the U.S. and has held a security clearance with two companies for several years. He is totally integrated into the U.S. culture with a U.S. born wife, two children, and an important position in the defense scientific community where he is highly regarded for his abilities and adherence to security requirements. Clearance is granted.

STATEMENT OF THE CASE

On January 26 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 February 3, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on February 16, 2005, and a Notice of Hearing was issued April 11, 2005 for a hearing held on May 12, 2005. The Government introduced six exhibits at the hearing and the Applicant introduced four. All were accepted into evidence. The Government offered five official documents for administrative notice to be taken. The Applicant, his wife and his supervisor testified. The transcript was received on May 20, 2005.

FINDINGS OF FACT

Applicant has denied all allegations under Foreign Influence-Guideline B with explanatory information. 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 45-year-old employee of a defense contractor working in a university lab as an engineer. He supervises eight employees. He was born in Iran in 1960 and left at age 15, at the direction of his parents who wanted him to have a better education and better prospects, to start high school in England living with an older brother. After high school he studied at a leading university in England and received both bachelor's and master's degrees in engineering. He received a grant from the British Ministry of Defence to pursue post-graduate research.

In 1984 he came to the United States to visit a brother and found work for a defense contractor for whom he worked until 1996 during which time he held a security clearance for much of the time. He left that company in 1996 to operate his own company until 2000. He became a U.S. citizen in 1991. He then discarded his Iranian passport and has since always traveled on his U.S. passport. Applicant married a U.S. born U.S. citizen in 1990 and they have two children born in the U.S. in 1992 and 1995. He is a dedicated family man who is a devoted husband and father.

The family members of the Applicant are his mother (age 78), three sisters, and two brothers. His mother and three sisters live in Iran but the mother and two sisters possess green cards from the U.S. One of those sisters is a widow who runs a pharmacy that her husband owned. The second sister is a housewife married to a doctor. The third sister lives in a small town in Iran and does not travel except to Germany where her two sons, like Applicant, emigrated to study and now live. Both are physicians. One brother lives in the U.S. and is a U.S. citizen. The other brother has lived in Canada for many years and is a Canadian citizen. Applicant's mother and the two sisters with green cards visit the U.S. occasionally.

Applicant is well regarded in his job by his employer as shown by the testimony of his supervisor. Applicant's reputation is that of a good manager and supervisor. He has held a security clearance for over two years with his present employer. He loves his work, and has great interest in what he is doing in the defense community. Aside from family, Applicant has no friends or financial interests in Iran. His last trip to Iran was in the early 1990's to visit his mother who had an operation. His only foreign travel since then was a trip to England in 1999. He has no plans to travel to 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.

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.

"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. The Government has established by official

documents of which I have taken official notice that the Government of Iran is a supporter of terrorist organizations, suppresses dissent, and exploits their own citizens. These are matters of serious concern regarding national security and they have been considered in the larger context of this case. Development of change in the attitudes of policies of the Government of Iran are matters of continuing concern to the U.S. Government whose policy is to foster peaceful change in that country.

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:

Conditions under Guideline B that could raise a security concern and may be disqualifying include 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.A2.1.2.1.) Possible mitigating conditions (MC) that might be applicable are a determination that the individuals 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 persons involved and the U.S.(E2.A2.1.3.1.), and contacts and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3.)

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).

Applicant left Iran before high school to live and study abroad, first in England and then after graduation left for the U. S. for better job opportunities. He worked from the time of his arrival in 1984 until 1996 for a defense contractor for whom he held a security clearance much of that time. He then went into private business in the U.S. with a partner for four years until starting with his present employer in 2000. His whole career path has been to distance himself from his country of birth. He has done all in his power to ensure that his mother and two of his sisters have the ability to have access to the U.S. with the possibility of citizenship. He married a U.S. citizen who testified on his behalf as to his character and involvement in activities similar to any other American father.

During the course of the hearing in this matter, a decision of May 10, 2005, (03-13595) by the Appeal Board was brought to the attention of both counsel. A request was made to submit a letter brief on its impact on the case and it was granted. The government has argued that the Guideline and

interpretive decisions of the Appeal Board presents an impossible standard for an applicant to meet if there are relatives living abroad. Surely, that cannot have been the intent of the drafters of the guideline. Applicant has shown, as clearly as any similarly situated applicant has done that he has totally integrated into the U.S. community and would not be subject to the concerns stated in Guideline B.

None of his relatives pose a potential security threat or are in a position to be influenced by the conduct of their government. None work for the Government of Iran. Applicant presents a believable case that he would not be influenced by anything anyone might seek him to do contra to the best interests of the U.S., and his own self interests in maintaining his present life with his family in the U.S.

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 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.

The fact that Applicant left Iran while a schoolboy, has only once returned, and now identifies more with friends from his school days in London than with an earlier childhood period in Iran convinces me of his determination to make certain that his good life in the U.S. remains as it is. Applicant is an impressive mature person who has a responsible position of trust and is performing valuable work for his company. The fact that he has held a security clearance for two companies for many years indicates his security trustworthiness. He provided sincere and credible testimony as to his relationship with his family both in the U.S. and Iran, his motivations, and his total loyalty to the U.S. His total immersion in the U.S. and his concerns for his work confirmed by the views of his supervisors is persuasive in my determination that the whole person concept justifies the conclusion that a security clearance should be granted.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is 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 1 Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge