

KEYWORD: Foreign Influence

DIGEST: Applicant has successfully mitigated the security concern of foreign influence raised by his family ties to Iran. Clearance is granted.

CASENO: 03-15205.h1

DATE: 08/26/2004

DATE: August 26, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15205

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant has successfully mitigated the security concern of foreign influence raised by his family ties to Iran. Clearance is granted.

STATEMENT OF THE CASE

On December 31, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B for foreign influence. In particular, the SOR alleges that Applicant's mother, sister, and two brothers are citizens of and residents in Iran, and that Applicant maintains telephonic contact with them every couple of months. Applicant answered the SOR on January 19, 2004, requesting a hearing.

Department Counsel indicated she was ready to proceed on June 1, 2004, and the case was assigned to me June 3, 2004. On June 16, 2004, a notice of hearing was issued to the parties scheduling the hearing for July 9, 2004. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the hearing transcript July 23, 2004.

FINDINGS OF FACT

In his answer, Applicant admitted the SOR allegations that his mother, two brothers, and sister are citizens of and residents in Iran, and that he maintains telephonic contact with them. After a thorough review of the record evidence, I make the following essential findings of fact:

Applicant's testimony is found to be credible. In doing so, I have given due consideration to the fact that English is not his native language and some minor allowances have been made for potential communication problems.

Applicant is employed by a defense contractor as a senior marine engineer working on the design of ships and related matters. He has worked as a marine engineer in the U.S. since at least 1980. He is seeking a security clearance for his current employment.

Applicant was born in Tehran, Iran, in 1948, and he is now 56 years old. Applicant served as an officer in the Imperial Iranian Navy, and he eventually rose to the rank of lieutenant commander. From June 1968 to June 1972, Applicant attended the Italian Naval Academy where he earned a bachelor of science degree in marine engineering. Applicant also attended two schools operated by the U.S. Navy. He was attending such a school in the U.S. during 1979 when the Islamic Revolution took place resulting in the Shah's fall from power. Due to the regime change, Applicant informed U.S. officials that he and his wife did not intend to return to Iran.

Applicant and his wife applied for and eventually obtained political asylum in the U.S. He became a naturalized U.S. citizen in July 1991; his wife did so in September 1997. Applicant and his wife have one adult child, a daughter, who is a native-born U.S. citizen. She is now a university student. His wife's immediate family members are located in the U.S.

Applicant has three brothers and one sister. His father passed away when Applicant was 13 years old. His mother is now 77 years old, and she suffered a stroke about three years ago leaving her partially disabled. She has never worked outside the home. Applicant does not provide financial support to his mother or other family members in Iran.

Two brothers remain in Iran while the other is a naturalized U.S. citizen. The two brothers living in Iran are approximately 53 and 44 years old. The younger brother is unmarried and suffers from epilepsy. He is unable to work and lives with his mother. The older brother works as a jeweler. He has chosen to remain unmarried and works to support his mother and younger brother. He also lives with his mother.

Applicant's sister is a 59-year-old divorced housewife. She lives with her niece, and she receives financial support from her ex-husband.

Applicant's mother, two brothers, and sister have not worked for the past or present Iranian government. Likewise, these immediate family members have never been arrested, detained, held, or prosecuted by Iran's current ruling regime.

Applicant has not seen his mother, two brothers, and sister since leaving Iran. He maintains contact with his family by calling his mother and sister every couple of months. The conversations are limited to routine family matters.

Applicant and his spouse have no financial interests in Iran. All their financial interests, including residential real estate, are located in the U.S. Applicant's current annual salary is about \$80,000. Together with his spouse, their annual income is about \$100,000.

Two witnesses testified on Applicant's behalf. The first is a retired U.S. Navy Rear Admiral who first met Applicant while stationed in Iran before the Shah fell from power. The Admiral has maintained a social relationship with Applicant. In the Admiral's opinion, Applicant is an honest and trustworthy person who can be trusted with access to classified information. The second witness has been Applicant's supervisor since approximately 1999. The supervisor described Applicant as a meticulous, professional, and conscientious person. He also said he would be hard pressed to choose anyone he has known professionally who has "higher moral fortitude."⁽²⁾ The supervisor emphasized that Applicant follows the rules to the letter.

Applicant is not involved or associated with any Iranian groups in the U.S. Applicant has not returned to Iran since his departure in 1978, and he does not intend to return so long as the present regime is ruling Iran.

As request by Department Counsel, I took administrative notice of information concerning Iran in Exhibits 2 and 3. In particular, I took administrative notice that, according to a report from the U.S. State Department (Exhibit 2), Iran has a dismal human rights record. And I took administrative notice, according to another State Department report (Exhibit 3), of the following matters concerning U.S.-Iranian relations:

The February 11, 1979, fall of the Shah of Iran, a key U.S. ally, opened a long rift in U.S.-Iranian relations. On November 4, 1979, radical students seized the U.S. Embassy in Tehran and held its diplomats hostage until minutes after President Reagan's inauguration on January 20, 1981. The United States broke relations with Iran on April 7, 1980, and the two countries have had no official dialogue since. Iran maintains an interests section in the Embassy of Pakistan. The U.S. protecting power in Iran is Switzerland. The U.S. Government prohibits most trade with Iran. The U.S. Government has special concerns about four areas of Iranian behavior: (1) its efforts to acquire weapons of mass destruction; (2) its support for and involvement in terrorism; (3) its support for violent opposition to the Middle East peace process; and (4) its dismal human rights records.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than a preponderance of the evidence.⁽⁶⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline B for foreign influence, a security concern 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 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. An applicant with immediate family members living in a country hostile to the U.S., like Iran, has a heavy burden to show those family ties do not pose a security concern.⁽¹²⁾

Here, based on the record evidence as a whole, the government has established its case under Guideline B. The concern here is Applicant's family ties to Iran. DC 1-(13) applies because Applicant's mother, sister, and two brothers are citizens of and residents in Iran. He has infrequent (every couple of months) contact with his mother and sister by telephone. I have reviewed the remaining DC under the guideline and conclude none apply.

I have reviewed the mitigating conditions under the guideline and conclude that MC 1-(14) applies for Applicant. The record evidence shows that Applicant's family members are not agents of a foreign power, (15) and so the issue under MC 1 is if the family members are in a position to be exploited by the Iranian government. Iran has been hostile to the U.S. since the 1979 Islamic Revolution overthrew the former pro-western government that was a close ally of the U.S. This situation, however, has remained essentially unchanged for the past 20-plus years. More specific to this case, Applicant has lived in the U.S. since 1978, he has worked as a marine engineer in the U.S. since at least 1980, and he obtained U.S. citizenship in 1991. During this time his mother, two brothers, and sister have lived in Iran. The best predictor of whether Applicant's family members are in a position to be exploited is what has happened in the past. Since deciding not to return to Iran in 1979, no action, as far as Applicant knows, has been taken by the Iranian government to exploit his relationship with his family members in Iran.

Still, Iran's hostility to the U.S. places a heavy burden on Applicant to show his family ties to Iran do not pose a security concern. On this point, Applicant has relatively limited telephonic contact with his mother, two brothers, and sister in Iran. Their typical conversations involve family matters. He has not returned to Iran since leaving to attend a military school in the U.S., and he does not intend to return to Iran as it is presently governed. He provides no financial support to any family members in Iran. His mother, two brothers, and sister are not employed by or connected to the Iranian military, law enforcement, or a governmental agency. In addition, Applicant has meticulous work habits and a practice of strictly following work rules. This suggests he will follow the rules and regulations for the proper handling and safeguarding of classified information, including reporting any attempts to exploit his family ties to Iran. Considering all these matters, I conclude Applicant has met his burden of showing that MC 1 applies notwithstanding Iran's hostility to the U.S.

Security clearance decisions are not an exact science, but are predictive judgments about a person's security suitability in light of the person's past conduct and present circumstances. (16) Here, we have a man who has lived in the U.S. for approximately 25 years, has been gainfully employed in his profession in the U.S. for more than 20 years, has been a law-abiding U.S. citizen for more than 10 years, but has four immediate family members who are citizens of and residents in Iran. Although the presence of his family ties to Iran may create the potential for foreign influence, his family ties are strongest to his immediate family members in the U.S.; namely, his wife and his native-born U.S. citizen daughter. These matters weigh heavily in Applicant's favor.

To sum up, the record evidence demonstrates Applicant has all the indicators of a mature, steady, responsible, and trustworthy individual. After weighing the record evidence as a whole, I conclude the favorable evidence outweighs the unfavorable evidence. Under the totality of circumstances, I conclude Applicant has satisfied his heavy burden to

mitigate the security concern raised by his family ties to Iran. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

As required by ¶ E3.1.25 of Enclosure 3 to the Directive, below are my conclusions as to the allegations in the SOR:

SOR ¶ 1-Guideline B: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: 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.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Transcript at p. 75.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
11. *Egan*, 484 U.S. at 528, 531.
12. ISCR Case No. 02-04786 (June 27, 2003) at p. 4 (citation omitted).
13. "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."
14. "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."
15. *See* 50 U.S.C. § 1801(b).
16. *Egan*, 484 U.S. at 528-529.