

KEYWORD: Foreign Influence

DIGEST: Applicant's mother is a citizen of Iran and has applied for U.S. citizenship. Applicant has two brothers and one sister who are citizens and residents of Iran. She traveled to Iran to visit her family members in 1995. Applicant's familial ties to citizens and residents of Iran raise serious security concerns because they could be exploited by a hostile government and result in the compromise of classified information. Clearance is denied.

CASENO: 03-15911.h1

DATE: 05/16/2005

DATE: May 16, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15911

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's mother is a citizen of Iran and has applied for U.S. citizenship. Applicant has two brothers and one sister who are citizens and residents of Iran. She traveled to Iran to visit her family members in 1995. Applicant's familial ties to citizens and residents of Iran raise serious security concerns because they could be exploited by a hostile government and result in the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 3, 2004, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing December 8, 2004, and requested that her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on February 4, 2005. The FORM contained documents identified as Items 1 through 7. By letter dated February 8, 2005, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant submitted additional information on March 18, 2005, and on April 11, 2005.⁽³⁾ Department Counsel did not object to Applicant's submissions. On May 11, 2005, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains three allegations of disqualifying conduct alleged under Guideline B, Foreign Influence. (Item 1.) In her answer to the SOR, Applicant admitted one of the three allegations and admitted in part and denied in part two of the allegations. (Item 2.) Her admissions are incorporated as findings of fact.

Applicant, a 53-year-old senior engineer scientist employed by a defense contractor, holds a Ph.D. in thermal sciences. She was born in Iran and became a naturalized U.S. citizen in 1996. She was granted a security clearance in July 2001.

Applicant was married in 1974 in Iran. In 1999, she was divorced from her husband. She is the mother of three adult children, all born in Iran and all now U.S. naturalized citizens. Applicant's mother, a citizen of Iran, is 78 years old and a widow. She resides with Applicant in the U.S. and holds resident alien status. (Item 5.) Applicant's mother has applied for U.S. citizenship and was notified her naturalization interview would occur May 10, 2005. (Applicant's submission of April 11, 2005.) Applicant denies her mother is an agent of the government of Iran. (Submission of March 18, 2005, at 2.) Applicant's security clearance application (SF-86), dated September 7, 2000, listed Applicant's mother's address of record as in Iran.

Applicant has two brothers and a sister who are citizens and residents of Iran. Applicant's siblings are not employed by the government of Iran. In her response to the FORM, Applicant denied she had strong ties to her siblings in Iran. (Submission dated March 18, 2005, 1-2.) Applicant also has six step-siblings who are citizens and residents of Iran.

Applicant traveled to Iran in 1995. She denies traveling to Iran since 1995. She claims she has not traveled to Iran since 1995 because she is not close to her siblings who live there.

I take administrative notice of a document entitled "Background Note: Iran," compiled by the Bureau of Near Eastern Affairs, U.S. Department of State, and dated August 2004. (Item 7.) "Background Note: Iran" states that the U.S. government prohibits most trade with Iran and objects to Iran's support for and involvement with international terrorism, its attempts to acquire nuclear weapons and other weapons of mass destruction, its support for violent opposition to the Middle East peace process; and its negative human rights record. (<http://www.state.gov/r/pa/ei/bgn/5314.htm>.)

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 has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's mother was a citizen of Iran who resided currently in Iran (¶ 1.a.); that Applicant 's sister and two brothers were citizens of Iran who reside in Iran (¶ 1.b.); and that Applicant had traveled to Iran in 1995 (¶1.c.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the government of Iran has declared itself hostile to the United States by supporting international terrorism, seeking to acquire nuclear weapons and weapons of mass destruction, and by opposing, through violence, U. S. policies such as the Middle East peace process and human rights. These hostile actions by Iran directly threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of Iran could be vulnerable to coercion, exploitation, or pressure.

Applicant admits her mother is a citizen of Iran (§ 1.a.) but also asserts her mother is a resident of the U.S. and plans to become a U.S. citizen soon. Applicant admits she has three siblings who are residents and citizens of Iran (§ 1.b.) but denies they are involved with the Iranian government. Applicant admits traveling to Iran in 1995 (§ 1.c.) but denies traveling to Iran since 1995. Applicant's admissions raise security concerns under Guideline B, subparagraphs E2.A2.1.2.1 and E2.A2.1.2.2. Applicant's mother is a citizen of Iran and resides with Applicant in the United States. Even if Applicant's mother becomes a U.S. citizen and continues to share living quarters with her, there is a potential under subparagraph E2.A2.1.2.2. for adverse foreign influence or duress independent of her citizenship status. Applicant's two brothers and one sister are citizens and residents of Iran. Applicant traveled to Iran on personal business in 1995 to see her family. These facts could make Applicant vulnerable to coercion, exploitation, or pressure by a hostile foreign government, despite her assertions that she has not been in contact with her siblings frequently and is not close to them.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the US. Mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's mother, sister, and two brothers are agents of a foreign power, they are citizens of a totalitarian state with interests antithetical to the United States, and they could be exploited by their government in a way that could force Applicant to choose between loyalty to them and the United States. (ISCR Case No. 02-13595, at 4-5 (App. Bd. May 10, 2005) Accordingly, MC E2.A2.1.3.1 applies only in part to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contact and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant's contacts with her family members who are citizens and residents of Iran are based on ties of familial affection or obligation. Thus, while the contacts with her sister and two brothers in Iran may be infrequent, they are not casual. Accordingly, mitigating condition E2.A2.1.3.3 does not apply to Applicant's relationships with her mother, her two brothers, and her sister.

Nothing in Applicant's answers to the SOR suggested she was not a loyal American citizen and a credit to her adopted country. However, she was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that she would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, allegations in subparagraphs 1.a. through 1.c. under Guideline B of the SOR are concluded against the Applicant.

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.: Against Applicant

DECISION

In light of all of the circumstances 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Applicant timely filed her initial response to the FORM with the DOHA headquarters office in Arlington, Virginia. Her materials were returned to her and she was advised to file them with DOHA's California office, which she did.