

DATE: July 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16522

ECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant came from Iran to the United States in 1984. She married a native born American in 1993, and became a naturalized citizen in 1995. She attended college in the U.S., and received a degree in 2001. Her father, mother and sister are citizens of and live in Iran. Her father is 83 and her mother 76. Both retired before the Iranian revolution. Her sister works for a private insurance company as an underwriter. Her contact with her Iranian relatives is limited to 3 or 4 times a year. She owns a 1/3 interest in her parents house. She intends to transfer her interest to her sister, and her interest pales in comparison to her and her spouse's \$400,000 net worth in the U.S. She would not submit to coercion, exploitation or pressure from a foreign government vis-a-vis her Iranian relatives. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On January 5, 2004, 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 the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about February 4, 2004.

The case was received by the undersigned on March 22, 2004. A notice of hearing was issued on April 8, 2004, and the case was heard on May 18, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called a witness to testify on her behalf. The transcript was received on June 3, 2004. The issue raised here is whether the Applicant's perceived foreign influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 42, and is employed by a defense contractor that seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline B - Foreign Influence

The Applicant came from Iran to the United States in 1984 (Transcript (TR) at page 18 line 7 to page 19 line 13, and at page 21 lines 12~18). She married a native born American in 1993, and became a naturalized citizen in 1995 (*id*, and TR at page 35 line 24 to page 39 line 9). She attended college in the U.S., and received a degree in 2001. (Government Exhibit (GX) 1 at page 1).

1.a~1.e. The Applicant's parents are citizens of and reside in Iran (GX 1 at page 3). Her 83 year old father is a retired civil engineer (TR at page 14 line 22 to page 15 line 17, and at page 24 line 5 to page 25 line 10). He retired before the fall of the Shah of Iran (*id*). Her 76 year old mother is retired from working for a school district (TR at page 15 line 18 to page 16 line 5, and at page 26 lines 10~22). She also retired before the fall of the Shah of Iran (*id*). The Applicant's 36 year old sister works for a private insurance company as an underwriter (TR at page 16 lines 6~17, and at page 27 line 20 to page 28 line 17). The Applicant contacts her Iranian relative only about 3 or 4 times a year (TR at page 17 lines 6~20, and at page 25 lines 12~18). Without the Applicant's prior knowledge, her parents gave the Applicant a 1/3 interest in their house in Iran (TR at page 16 line 18 to page 17 line 6, at page 29 line 9 to page 30 line 16, and at page 31 line 18 to page 32 line 4).

She intends to give her 1/3 interest to her sister (*id*). The Applicant's and her spouse's net worth in the U.S. is about \$400,000 (TR at page 22 line 14 to page 23 line 5, and at page 35 lines 13~18). She would not submit to coercion, exploitation or pressure from a foreign government vis-a-vis her Iranian relatives (TR at page 30 line 17 to page 31 line 6).

Mitigation

The Applicant's Manager and Test Lead aver that she is trustworthy, and should be granted a security clearance (AppXs A and B).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is

speculative or conjectural in nature.

The Government must make out a case under Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

When the Applicant became a U.S. citizen in 1995, she renounced her Iranian citizenship. She married a native born American and pursued her college education as an American at an American institution.

The Applicant's parents and sister, however, are citizens of and live in Iran. The second disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of . . . a foreign country." Her parents are elderly, both having retired prior to the current regime coming to power. Her sister works for a private insurance company as an underwriter. None of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in Iran can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. The first mitigation condition is therefore applicable as "the immediate family members . . . 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 United States."

The Applicant does own a 1/3 interest in her parents house. She intends to transfer her interest to her sister. This 1/3 interest is not "substantial;" and as such, the last disqualifying condition is not applicable. Were it deemed to be substantial, this "[f]oreign financial interest" would be "minimal" when compared to her \$400,000 U.S. net worth. The third mitigating condition would therefore be applicable. As mitigation is shown, Guideline B is also found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge