

DATE: June 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18545

ECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign family ties have been mitigated and do not raise a security concern. Clearance is granted.

STATEMENT OF THE CASE

On January 21, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), 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.

The Applicant responded to the SOR in writing on February 11, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 7, 2004. A notice of hearing was issued on April 27, 2004, scheduling the hearing for June 9, 2004. At the hearing the Government presented five exhibits. The Applicant presented no exhibits and testified on his own behalf. The record was left open to allow the Applicant an opportunity to submit additional evidence. The Applicant submitted one Post-Hearing Exhibit consisting of nine pages. The official transcript (Tr.) was received on June 25, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 47 years of age. He holds a Bachelor's Degree in Electrical Engineering. He is employed as a Security Officer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible

for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Iran in 1956 into a Jewish family. He moved to the United States in December 1978 as a student to continue his college education. In August 1996, he became a naturalized United States citizen. In 1989, he married a woman who was also born in Iran. She also became a naturalized United States citizen in 1996. They have two children born in the United States. Prior to coming to the United States, the Applicant served in the compulsory Iranian military from 1975 to 1977, during the Shaw's regime. Since moving to the United States in 1978, the Applicant has never returned to Iran. (See Government Exhibit 2 and Tr.p. 20).

The Applicant's parents have resided in the United States for almost six years. They have obtained their green cards and are planning on becoming United States citizens when they are eligible. The Applicant's brother is a dentist who resides in and is a citizen of the United States. The Applicant also has two uncles and his brother-in-law's parents who reside in the United States. The only family the Applicant has that remain in Iran is a sister, a brother-in-law and their two children who are citizens of Iran. His sister is a homemaker, his brother-in-law is a dentist. The Applicant has contact with them about once or twice a year. They are planning to leave Iran and immigrate soon to either the United States or Europe. The Applicant never discusses his work with anyone, including his family members.

The Applicant owns a home in the United States valued at approximately \$450,000.00. He has no assets of any kind in Iran.

Mitigation.

Several letters of recommendation from the Applicant's supervisor and coworkers attest to the Applicant's reliability, professionalism, good judgment, honesty, integrity and conscientiousness. The Applicant is well respected, a hard worker, and an excellent employee who takes his job very seriously. (See Applicant's Post Hearing Exhibit).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

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: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that 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.

Condition that could raise a security concern:

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 or present in, a foreign country;

Conditions that could mitigate security concerns:

1. A determination that immediate family member(s), spouse, father, mother, sons daughters, brothers, sisters), cohabitant, or associates(s) in questions 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) and the United States;

3. Contact and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between 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 adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections 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

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign influence has a direct and negative impact on his suitability for access to classified information.

This 47 year old Applicant came to the United States as a student and has lived in the United States for the past 25 years. He has never returned to the Iran. He is a United States citizen. He has extensive family in the United States. He obtained his advanced education, established his family, and made the United States his home. Although his sister and brother-in-law are citizens of and reside in Iran, the rest of his family resides in the United States. The Applicant is married to a United States citizen and they have two children who were born in the United States. None of the Applicant's family members in Iran or in the United States have ever been affiliated with, employed for, or agents of, the Iranian Government. Therefore, mitigating condition 1 applies.

In addition, the Applicant's contact with his sister and brother-in-law in Iran is casual and infrequent. Mitigating condition 3 applies. The Applicant has significant assets in the United States and none in Iran. Other than with his sister, and brother-in-law and their two children, the Applicant has, for the most part, cut all of his ties with Iran. The Applicant credibly testified that there is no situation that could ever occur that would force him to reveal classified information to any unauthorized individual no matter what their relationship to the Applicant. He has no foreign ties or contacts that could potentially influence him. Therefore, I find that there is no situation that could create the potential for foreign influence that could result in his compromise of classified information. Accordingly, the Applicant's request for a security clearance must be granted under Guideline B.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

DECISION

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

Darlene Lokey Anderson

Administrative Judge