

KEYWORD: Foreign Influence; Financial

DIGEST: Applicant failed to mitigate security concerns raised by his financial situation and his family members, who are citizen-residents of Iran. Clearance is denied.

CASENO: 03-27083.h1

DATE: 01/23/2005

DATE: January 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-27083

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns raised by his financial situation and his family members, who are citizen-residents of Iran. 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 18 March 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision⁽¹⁾-security concerns raised under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 11 April 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on 27 July 2005. A hearing was originally scheduled on 29 September 2005, but was postponed due to Hurricane Rita. On 3 November 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 17 November 2005.

FINDINGS OF FACT

Applicant is a 45-year-old employee of a defense contractor. He was born and raised in the Kurdish section of Iran. His father, who is deceased, served in the Shah's military. Applicant served in the Iran military as a combatant during the Iran-Iraq war and was wounded. Tr. 19-20.

Applicant came to the U.S. in 1985. In 1986, he married a native born U.S. citizen. Applicant and his wife have two children; both were born in the U.S. Applicant became a naturalized U.S. citizen in 1993 and was issued a U.S. passport in 1995.

Applicant's mother is 80 years old⁽²⁾ and is a citizen-resident of Tehran. Tr. 18. Applicant also has two brothers, both engineers, who are citizen-residents of Iran. Applicant has another brother who came to the U.S. in 1978 to study and stayed after the Shah was overthrown. He became a naturalized U.S. citizen in 1993. Applicant has two sisters who are citizens of Iran. One sister is a widow and resides in Iran; the other is a permanent resident of the U.S. She is married to a naturalized U.S. citizen of Iranian birth who operates a Persian rug company. No member of Applicant's family living in Iran has any ties to the government of Iran, nor are any of them in a sensitive or political position. Ex. 2 at 2.

Eight to ten years ago, Applicant gave his mother \$20,000 so she could buy a home and move from the northern part of Iran to Tehran. Tr. 21-23. On occasion, he has provided her small amounts of money, but none since 2004. Tr. 22. He talks to his mother on the telephone once every two weeks. Applicant, his wife, and children visited Applicant's family in Tehran in 1995 and in 2000.⁽³⁾ During the 1995 trip, it was not possible to enter Iran with a U.S. passport. Instead of presenting their passports, Applicant presented money and they were allowed to enter. In 2000 they were able to use their U.S. passports. Tr. 24-25.

Applicant's mother visited him in the U.S. on two occasions, the last being just before the 11 September 2001 attack on the Pentagon and the World Trade Center.

In 2003, Applicant was sent by his employer to the United Arab Emirates (UAE) to assist in a project. After he completed his work, his family members from Iran joined him for a vacation.

Applicant returned to Iran in December 2004 after the death of his nephew in an automobile accident. Tr. 25. Applicant has always briefed his company's security officials before and after each of his trips outside the U.S.

Iran is a constitutional Islamic republic. Ex. 6. It is state sponsor of terrorism. Ex. 7 at 4. The Government has a poor human rights record. Ex. 8 at 1.

Applicant and his wife began experiencing financial difficulties in 1997-98, when she had to quit her job because of back spasms. Applicant and his wife have nine delinquent debts in collection status totaling more than \$106,000. Although they tried to settle these debts they were not able to reach agreement with the holders of the notes. In October 2005, Applicant and his wife filed a Chapter 7 bankruptcy. All of the debts listed in the SOR are contained in the

bankruptcy petition. Applicant's wife accepts the blame for their financial condition because she was handling the family's finances. She had hoped to pay off these debts, but as she is no longer working, it is not possible.

Although Applicant and his wife still have two credit cards, they haven't used them in the last few months. They are making payments on three cards now. Two have balances of \$100, the third is for \$1,800.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

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

CONCLUSIONS

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's mother, sister, and two brothers are citizen-residents of Iran (¶ 1.a); another

sister is a citizen of Iran residing in the U.S. (§ 1.b); he sends money to his mother and sister in Iran twice a year (§ 1.c); he helped his mother purchase a home in Iran (§ 1.d); his U.S. passport was confiscated when he traveled to Iran in 1995 (§ 1.e); he arranged to meet his Iranian relatives in the UAE from June-July 2003, while he was there on business (§ 1.f). Applicant admitted each of the allegations, except for § 1.c.

A security risk may exist when an applicant's immediate family, or other persons to whom he 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. Directive § E2.A2.1.1.

The Government's evidence established a potentially disqualifying condition under Guideline B. Members of Applicant's immediate family (his mother, two sisters, and two brothers) are citizens and/or residents of a foreign power. DC E2.A2.1.2.1.

An applicant may mitigate foreign influence security concerns by showing the foreign associates are neither "agents of a foreign power" nor in a position to be exploited by a foreign power in a way that could force the applicant to choose between loyalty to the family member or associate and loyalty to the U.S. MC E2.A2.1.3.1. It is also mitigating to show the applicant promptly reported to proper authorities all of his contacts with a foreign country (MC E2.A2.1.3.4), and he has no foreign financial interests (MC E2.A2.1.3.5).

The evidence of record supports a conclusion that Applicant's foreign associates are not agents of a foreign power. None are connected to the government of Iran or any other foreign power.

Whether Applicant is in a vulnerable position concerning his foreign associates "hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather hinges on the concept that applicant should not be placed in a position where he is forced to make such a choice." ISCR Case no. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005).

In assessing whether an associate is in a position to be exploited by a foreign power, it is helpful to consider several factors. The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. *See* ISCR Case No. 02-24254, 2004 DOHA LEXIS 703 at *17 (App. Bd. Jun. 29, 2004) (distinguishing ISCR Case No. 98-0419 (App. Bd. Apr. 30, 1999) and suggesting it was appropriate for the administrative judge to consider that the foreign country involved had a friendly relationship with the United States, is not an authoritarian regime, and is not on the U.S. list of countries sponsoring terrorism); *but see* ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005) (claiming "nothing in Guideline B indicates or suggests that it is limited to countries that are hostile to the U.S.>").

Applicant was unable to establish his family members in Iran were not in a position to be exploited by a foreign power in a way that could force him to choose between loyalty to his family and loyalty to the U.S. Iran is a state sponsor of terrorism and has an abominable human rights record. Under all the circumstances, I conclude MC E2.A2.1.3.1 does not apply.

I also conclude Applicant reported his foreign travels and contacts with foreign citizens, as required. MC E2.A2.1.3.4 applies. Despite his financial assistance to his mother, I conclude Applicant has no financial interests overseas. MC E2.A2.1.3.5 applies.

After thoroughly reviewing all of the evidence, the disqualifying and mitigation conditions, and the adjudicative process factors, I find against Applicant on ¶¶ 1.a and 1.b. I find for Applicant on the remaining allegations under ¶ 1 of the SOR. Applicant's financial assistance to his mother and his travels to Iran and the United Arab Emirates, where he met his family members, are not disqualifying conditions. They are merely evidence of Applicant's close ties of affection and obligation to members of his family.

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had nine debts placed for collection totaling more than \$94,000 (¶¶ 2.a-2i) and because of his financial condition, he is unable to pay these debts (¶ 2.j). Applicant admits each of the debts alleged in SOR ¶ 2. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence establishes potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3).

An applicant may mitigate such disqualifying conditions by establishing the debts were caused by conditions beyond his control (MC E2.A6.1.3.3) and he has initiated a good-faith effort to resolve his debts (MC E2.A6.1.3.6). It appears Applicant's financial crisis resulted from his wife having to stop working in 1997-98 because of her health, and Applicant initiated a good-faith effort to resolve his debts by filing a Chapter 7 bankruptcy. Both mitigating conditions apply, but they are not dispositive. Applicant did little to resolve many of these debts, and did not file for bankruptcy protection, until almost the eve of the hearing. Applicant's wife may have handled the family's finances, but that does not excuse Applicant from the affects such debts have on eligibility for a security clearance. I find against Applicant on ¶ 2. Bankruptcy is an authorized means for an applicant to resolve his debts, but the bankruptcy has not been finalized

and Applicant does not have a sufficient track-record of financial stability to grant him a clearance.

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: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraphs 2.a-2.j: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).
2. In his security clearance application, Applicant claimed his mother was born in 1930, making her 75 years old. In his signed, sworn statement of 14 October 2003, Applicant asserted she was born in 1932, making her 73. Ex. 2 at 1.
3. In his signed, sworn statement, Applicant claimed his last visit to Iran was in 1995 and he hadn't returned because he considered it to be too dangerous. Ex. 2 at 2. Although he failed to note his 2000 trip to Iran, he did discuss his 2003 trip to the UAE, where he met with his family after conducting business for his employer there.