

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant was born in Iran and became a United States citizen in 1990. His family in the United States consists of one daughter. Applicant's mother, sister and brother are citizens and residents of Iran. Applicant's strong attachment to his family in Iran, primarily his mother, creates a significant threat that he would respond unfavorably if pressure was placed on him to act against United States interests. Mitigation has not been shown. Clearance is denied.

CASENO: 04-05932.h1

DATE: 07/26/2005

DATE: July 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05932

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Phillip Carter, Esq.

SYNOPSIS

Applicant was born in Iran and became a United States citizen in 1990. His family in the United States consists of one daughter. Applicant's mother, sister and brother are citizens and residents of Iran. Applicant's strong attachment to his family in Iran, primarily his mother, creates a significant threat that he would respond unfavorably if pressure was placed on him to act against United States interests. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated January 31, 2005, to the Applicant which detailed 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on Foreign Influence (Guideline B) concerns, because of the foreign residency and citizenship of close family members in Iran and on Foreign Preference (Guideline C) concerns, related to his exercise of dual citizenship with the United States and Iran.

Applicant filed a notarized response dated February 12, 2005, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

On March 21, 2005, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on May 16, 2005, and the hearing was held on June 2, 2005.

At the hearing, Department Counsel offered six documentary exhibits (Exhibits 1 through 6) and no witnesses were called. Applicant, through Counsel, offered 17 documentary exhibits, (Exhibits A through Q), and offered his own testimony. The transcript (Tr) was received on June 14, 2005.

FINDINGS OF FACT

The SOR contains three allegations, 1.a. through 1.c., under Guideline B and five allegations, 2.a. through 2.e., under Guideline C. Applicant admitted SOR allegations 1.a., 1.b., 2.c., 2.d., and 2.e., and he denied 1.c., 2.a., and 2.b. The admissions are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 49 year old Principal Engineer/Scientist of a United States defense contractor that wants him to have a security clearance. He has been married and divorced three times, and he has one daughter. He received a Ph. D. Degree in Engineering and Master's and Bachelor's Degrees in Mechanical Engineering from United States universities.

Applicant was born in Iran in 1955 and immigrated to the United States in 1975. He became a naturalized United States citizen in 1990.

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members who are citizens of Iran.

Applicant's mother is a citizen of Iran. She is 84 years old and not in good health, and she is retired. She lives in Tehran, Iran, with Applicant's sister. He communicates with her by telephone, approximately once a month, although when she has been ill, he has called far more often. Applicant has sent his mother small gifts and money, and he sent \$500 for her, when she needed surgery (Tr at 41-44).

Applicant also has a sister and brother, who are resident and citizens of Iran. Neither his sister nor his brother work for the Iranian Government. He speaks to his sister when he calls for his mother, and he speaks to his brother one or two times a year.

Regarding his relationship with his family in Iran, Applicant testified, "I love and respect my mother and although I'm not close to my brother and sister, I will not deny the fact that they are family." (Tr at 53).

Paragraph 2 (Guideline C - Foreign Preference)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has acted in such a way as to indicate a preference for another country over the United States.

Applicant retained and renewed his Iranian passport on November 15, 1995, after he became a United States citizen on October 5, 1990. He used his Iranian passport to enter and exit Iran on three occasions after he became a United States citizen, in 1995, 1999, and 2003.

Applicant finally relinquished this Iranian passport to the proper Iranian authorities in a letter that he wrote on December 9, 2004. He also indicated in that letter that he had renounced his Iranian citizenship (Tr at 34-36) (Exhibit I). He has indicated that he has no further intention to visit Iran.

Mitigation

Applicant introduced a number of documents which establish Applicant's strong financial position in the United States (Exhibits A, B, C, D, and F). Significantly, he testified that his home was worth in excess of \$600 thousand and that he

earned \$140 thousand a year (Tr at 54-55).

Applicant also introduced letters from individuals, who have known Applicant in a professional capacity, and they spoke very highly about Applicant's honesty and truthfulness (Exhibits K through P).

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2.

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses.

Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of Applicant, I conclude the following with respect to Guidelines B and C:

(Guideline B - Foreign Influence)

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress.

Disqualifying Condition (DC) E2.A2.1.2.1. must be considered adversely in assessing Applicant's current suitability for access to classified information, when 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, The existence of Applicant's mother, sister, and brother, who are citizens and residents of Iran comes within DC E2.A2.1.2.1.

The evidence has established that Applicant continues to have strong feelings toward his family, especially his mother, in Iran, a country whose interests are extremely inimical to that of the United States. Applicant's strong attachment to his family in Iran creates a significant threat that he would respond unfavorably if pressure was placed on him to act against United States interests. Therefore, I cannot find that Mitigating Condition (MC) E2.A2.1.3.1., a determination that the immediate family members 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 persons involved and the United States, applies. Guideline B is found against Applicant.

(Guideline C - Foreign Preference)

Guideline C is based on actions taken by an individual that indicates a preference for a foreign country over the United States. Applicant's continued use of his Iranian passport after he became a United States citizen raises serious Foreign Preference (Guideline C) concerns.

At the time the SOR was issued, Disqualifying Conditions (DC) E2.A3.1.2.1., the exercise of dual citizenship, applied because of Applicant's use of his Iranian passport during three separate trips that he took after he became a United States citizen. DC E2.A3.1.2.2. also applied because of Applicant's continued use and his failure to return his Iranian passport to the proper authorities, until December 9, 2004.

However, Applicant has now surrendered his passport to the proper authorities. I conclude that neither DC E2.A3.1.2.1. nor E2.A3.1.2.2. currently apply. Also since he has renounced his Iranian citizenship, MC E2.A3.1.3 .4. is applicable to this case. I resolve Guideline C for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1. a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

DECISION

In light of all 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.

Martin H. Mogul

Administrative Judge