

KEYWORD: Foreign Influence

DIGEST: Applicant and his immediate family fled Iran in 1980 and have become U.S. citizens. Applicant has polite telephonic contact with an uncle in Iran once a year and no contact with his five aunts in Iran. Applicant's wife is a naturalized U.S. citizen. Her parents are citizens and residents of the Republic of Korea (ROK). Applicant and his wife are estranged from her father, a retired diplomat for the ROK. Applicant has only limited and superficial contact with his mother-in-law because of the language barrier. The security concern based on foreign influence is mitigated. Clearance is granted.

CASENO: 04-06222.h1

DATE: 12/27/2005

DATE: December 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06222

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

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SYNOPSIS

Applicant and his immediate family fled Iran in 1980 and have become U.S. citizens. Applicant has polite telephonic contact with an uncle in Iran once a year and no contact with his five aunts in Iran. Applicant's wife is a naturalized U.S. citizen. Her parents are citizens and residents of the Republic of Korea (ROK). Applicant and his wife are estranged from her father, a retired diplomat for the ROK. Applicant has only limited and superficial contact with his mother-in-law because of the language barrier. The security concern based on foreign influence is mitigated. Clearance is granted.

STATEMENT OF THE CASE

On April 22, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline B (Foreign Influence), based on his family ties in the Republic of Korea (ROK) and Iran.

Applicant answered the SOR in writing on June 20, 2005, admitted the allegations in part and denied them in part, offered explanations, and requested a hearing. The case was assigned to me on September 12, 2005, and heard on October 26, 2005. At the hearing, I granted Department Counsel's motion to amend paragraphs 1.d. and 1.e. of the SOR to conform to the evidence. DOHA received the transcript (Tr.) on November 16, 2005.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 38-year-old information technology consultant for a defense contractor. He was born in Iran. He first came to the U.S. when he was about five years old, accompanying his family while his father completed college in the U.S. Applicant attended school in the U.S. and learned to speak English. He returned to Iran with his family when he was about eight years old.⁽¹⁾

Applicant and his immediate family, members of the Baha'i community, fled from Iran in 1980 to escape religious prosecution at the hands of the new Islamic government. They traveled to the U.S. Embassy in Pakistan, applied for asylum, and stayed for five days with a Baha'i family in Pakistan, awaiting a decision on their request. They were granted religious asylum in the U.S. in October 1980. Applicant, his father, and his brother became naturalized U.S. citizens in September 1989.⁽²⁾

Applicant married a citizen of the ROK in 1993. His wife became a permanent resident of the U.S. shortly after their marriage, and she became a naturalized U.S. citizen on August 16, 2005.⁽³⁾ Because Applicant's wife was the daughter of a diplomat, she moved frequently as a child and young adult, and she spent only about three or four years living in the ROK before she moved permanently to the U.S.⁽⁴⁾ Applicant and his wife have three children who are native-born U.S. citizens and are being raised in a traditional American life style.⁽⁵⁾ They gave their children names that would be easy to pronounce in English but also have significance in both Farsi and Korean languages.⁽⁶⁾ Applicant's wife has two sisters who are citizens and residents of the U.S.⁽⁷⁾

Applicant's mother was a dual citizen of the U.S. and Iran, residing in the U.S., until she renounced her Iranian citizenship and surrendered her Iranian passport on October 1, 2005.⁽⁸⁾ She traveled to Iran to visit her siblings two or three times before surrendering his Iranian passport, but she does not intend to visit Iran again. She talks to Applicant's uncle by telephone four to six times a year.⁽⁹⁾

Applicant's uncle, three maternal aunts, and two paternal aunts are citizens and residents of Iran.⁽¹⁰⁾ Because Applicant's aunts and uncle are Baha'i, they are prohibited from holding any government positions and have limited economic opportunities.⁽¹¹⁾ His uncle is a retired building contractor but none of his aunts has been employed outside the home.⁽¹²⁾

Applicant's mother talks to two of his maternal aunts once or twice a year and has no contact with a third aunt. ⁽¹³⁾ One of Applicant's four maternal aunts referred to in the SOR ¶ 1.e. recently died. ⁽¹⁴⁾

Applicant's father has never visited Iran since he fled in 1980. Because he is Baha'i and was a prominent person before the revolution, he would risk detention and execution if he returned to Iran. He talks to Applicant's two paternal aunts by telephone about twice a year. ⁽¹⁵⁾

Applicant contacts his uncle once a year to extend greetings on the Persian New Year. The conversation is limited to an exchange of seasonal greetings and polite wishes that everyone is doing well. ⁽¹⁶⁾ They do not discuss politics or their work because mail and electronic communications are routinely monitored. ⁽¹⁷⁾ Applicant has had no contact with his remaining relatives in Iran since a family reunion in Turkey in 1999.

Applicant's mother-in-law and father-in-law are citizens and residents of the ROK. Applicant's father-in-law is a retired diplomat for the ROK who previously served as ambassador to Chile and Belgium. He draws a pension as a retired diplomat and is not otherwise employed. ⁽¹⁸⁾ Applicant and his spouse have had no contact with his father-in-law since 1999, when they became estranged from him because of his objection to their marriage, his extramarital affairs while visiting in the U.S., and his disapproving attitude about their having daughters instead of sons. Applicant ejected his father-in-law from their house and told him to never come back. ⁽¹⁹⁾ They maintain contact with Applicant's mother-in-law, but communication is difficult for Applicant because he speaks very little Korean and his mother-in-law speaks very little English. ⁽²⁰⁾ Applicant testified his relationship with his mother-in-law is pleasant, but not really a "bond of affection" because of their limited ability to communicate. ⁽²¹⁾

The Islamic Republic of Iran is a constitutional, theocratic republic dominated by Shi'a Muslim clerics. The U.S. and Iran have had very restricted economic ties and virtual no diplomatic relations. Iran is a very active state sponsor of terrorism and has a dismal human rights record. ⁽²²⁾

The ROK is a republic with a democratically elected president and legislature and an independent judiciary. Its government generally respects the human rights of its citizens. ⁽²³⁾ It is a friend and ally of the U.S. The U.S. is obligated under the 1954 Mutual Defense Treaty to help the ROK defend itself against external aggression. The ROK economy is growing, and the ROK is a major trading partner with the U.S. Relations between the U.S. and the ROK are sometimes complicated by the efforts of the ROK and the Democratic Republic of Korea to improve relations. The U.S. policy is to treat the question of peace and security on the Korean Peninsula as a matter, first and foremost, for the Korean people to decide. ⁽²⁴⁾

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 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), as amended and modified. 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.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see Directive ¶ E2.2.2.

CONCLUSIONS

A security risk may exist when an applicant's immediate family, or other persons to whom he or she 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 totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

A disqualifying condition (DC 1) may arise when "[a]n immediate family member [spouse, father, mother, sons, daughters, brothers, sisters], 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." Directive ¶ E2.A2.1.2.1. After the SOR was issued, Applicant's spouse was naturalized as a U.S. citizen and his mother renounced her Iranian citizenship. Thus, all of Applicant's immediate family members now are citizens and residents of the U.S., and the allegations in the SOR ¶¶ 1.a. and 1.f. are rebutted.

The evidence establishes Applicant has no "close ties of affection or obligation" to his aunts and uncles in Iran. However, "there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Furthermore, a disqualifying condition (DC 2) may arise if an applicant is "[s]haring living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists." Applicant's wife's ties to the ROK and the possible effect they may have on Applicant's conduct are relevant considerations under Guideline B (Foreign Influence). ISCR Case No. 01-02452 at 8 (App. Bd. Nov. 21, 2002).

Applicant has rebutted the presumption of ties of affection or obligation to his father-in-law, but he has not rebutted the presumption of ties of obligation for his mother-in-law. Furthermore, his wife's ties of affection and obligation to her mother raise the potential for adverse foreign influence or duress. Thus, I conclude DC 1 and DC 2 are established based on Applicant's mother-in-law.

A disqualifying condition (DC 3) may arise if an individual has relatives "who are connected with any foreign government." Directive ¶ E2.A2.1.2.3. Although Applicant's father-in-law served as a career diplomat for the ROK, the evidence reflects he is fully retired and no longer serving in any governmental capacity. Thus, I conclude DC 3 is not

established.

In cases where an Applicant has immediate family members, a cohabitant, or associates who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members, cohabitant, or associate(s) 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 person(s) involved and the United States." Directive ¶ E2A2.1.3.1.

Notwithstanding the facially disjunctive language of MC 1 ("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power"). Since the Government produced substantial evidence to establish DC 1, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Although the ROK historically has been regarded as friendly to the U.S., the distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, 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.

No one in Applicant's immediate or extended family is an agent of a foreign power, under either the statutory definition in 50 U.S.C. 1801(b) or the broader definition apparently adopted by the Appeal Board, nor is either of his wife's parents. *See* ISCR Case No. 02-24254, 2004 WL 2152747 at *4-5 (App. Bd. Jun.29, 2004) (employee of foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of MC 1). Applicant's aunts and uncles in Iran are not connected to the government, dependent on the government, or in occupations that lend themselves to government-sponsored industrial espionage or private economic espionage. Applicant's father-in-law is dependent on the ROK government for his pension, but he has no other governmental connection and is not employed in any private business.

His mother-in-law is not dependent on the ROK government and is not employed outside the home.

None of the individual family circumstances discussed above are determinative. Nevertheless, Applicant's evidence that his extended family in Iran and his wife's family in the ROK have no governmental connections or business connections susceptible to industrial espionage is relevant. Similarly, the nature of the ROK and Iranian governments, their human rights records, and their relationships with the U.S. are clearly not determinative. Nevertheless, they are all relevant factors in determining the likelihood that the ROK and Iran would exploit or threaten their citizens in order to force a U.S. citizen to betray the U.S.

An applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). After evaluating each family member's individual circumstances as well as the totality of Applicant's family ties to Iran and the ROK, I conclude Applicant has carried his burden of establishing MC 1.

A mitigating condition (MC 3) may apply if "[c]ontact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. Applicant exchanges polite greetings with his uncle once a year. He has no contact with his aunts and his father-in-law. He has very limited and superficial contact with his mother-in-law because of the language barrier. I conclude MC 3 is established.

After weighing the disqualifying and mitigating conditions and making a commonsense evaluation of the evidence, I conclude the security concern based on foreign influence is mitigated.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman

Administrative Judge

1. Tr. 55-58.
2. Government Exhibit (GX) 2 at pp. 1, 13, 14.
3. GX 2 at p. 2; Applicant's Exhibit (AX) A.
4. Tr. 98.
5. GX 1 at pp. 4-5; AX C through G.
6. Tr. 55.
7. Tr. 104.
8. AX B.

9. Tr. 87.
10. The SOR alleged Applicant had four material aunts living in Iran, but one has since died.
11. Tr. 66-67.
12. Tr. 66.
13. Tr. 88-89.
14. Tr. 86-87.
15. Tr. 90.
16. Tr. 67-68.
17. Tr. 68; *See* U.S. Dept. Of State, *Consular Information Sheet, Iran* 1-2 (Aug. 25, 2005), attached to the record as Appellate Exhibit VII..
18. Tr. 110.
19. Tr. 79.
20. *Id.*; GX 3 at p. 5; Tr. 76.
21. Tr. 94.
22. *See* U.S. Dept. Of State, *Background Note: Iran* 1-2, 5-7 (Aug. 2005), attached to the record as Appellate Exhibit VIII; U.S. Dept. Of State, *Iran, Country Reports on Human Rights Practices* 1 (Feb. 28, 2005), attached to the record as Appellate Exhibit X; U.S. Dept. Of State, *Country Reports on Terrorism* (April 2005), attached to the record as Appellate Exhibits XI and XII..
23. *See* U.S. Dept. Of State, *Republic of Korea, Country Reports on Human Rights Practices* 1 (Feb. 28, 2005), available on the internet at www.state.gov/g/drl/hrrpt/2004/41647.htm.
24. *See* U.S. Dept. Of State, *Background Note: South Korea* 3-5 (Apr. 2005), attached to the record as Appellate Exhibit I; Congressional Research Service, *Korea: U.S. Korean Relations-Issues for Congress* (Feb. 22, 2005).