

KEYWORD: Foreign Influence

DIGEST: Applicant is a 58-year-old naturalized United States citizen who has resided in the United States for 31 years. He works as a computer specialist for a federal contractor. He has three siblings who are citizens and residents of Iran. Applicant failed to mitigate the foreign influence security concerns raised by the presence of his family members in Iran. Clearance is denied.

CASENO: 04-06501.h1

DATE: 12/27/2005

DATE: December 27, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06501

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 58-year-old naturalized United States citizen who has resided in the United States for 31 years. He works as a computer specialist for a federal contractor. He has three siblings who are citizens and residents of Iran. Applicant failed to mitigate the foreign influence security concerns raised by the presence of his family members in Iran. Clearance is denied.

STATEMENT OF THE CASE

On May 6, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR, which is essentially an administrative complaint, detailed reasons under Guideline B (Foreign Influence) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On May 25, 2005, Applicant filed his answer and requested a hearing. The case was assigned to me on September 29, 2005. A Notice of Hearing was issued on October 13, 2005, and the hearing was held on November 1, 2005. At the hearing the Government introduced Exhibits 1-2 into evidence without objection. It also submitted four documents for administrative notice that were marked Exhibits I-IV and introduced without an objection. Applicant submitted one exhibit that was marked as Applicant Exhibit A and admitted into evidence without objection. Applicant testified in his case-in-chief and called two witnesses. DOHA received the Transcript (Tr.) on November 16, 2005.

FINDINGS OF FACT

In his Answer to the SOR, Applicant admitted all the allegations pertaining to Guideline B. These admissions are incorporated into my findings of fact. After a complete review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 58-year-old married man.⁽¹⁾ He was born and raised in Iran. After graduating from the university, he was conscripted into the army for 18 months.⁽²⁾ In 1974, Applicant entered the United States on a student visa to pursue a graduate degree at a private university.⁽³⁾ In 1977, having received a Master of Science in Operations Research and a Master of Science in Computer Science, he returned to Iran.⁽⁴⁾ He joined the faculty at a major university where he taught and published two textbooks, one of which is still in use.⁽⁵⁾ Seven years later he returned to the United States on a student visa to pursue his Ph.D., which he earned in 1988. He became a naturalized citizen in 1992. Since May 2002, he has worked as a systems architect for a federal contractor, in addition to teaching part-time at a local college.⁽⁶⁾ In April 2003, he completed a Security Clearance Application (SCA).⁽⁷⁾

In 1975, while a graduate student, Applicant married his wife, who is also a native-born citizen of Iran. She obtained United States citizenship in 1992.⁽⁸⁾ They have two sons. One was born in Iran and became a naturalized citizen in 1992. The other son was born in the United States.⁽⁹⁾ The son born in Iran works for a federal contractor and holds a security clearance.⁽¹⁰⁾

Applicant is the youngest of six children born in Iran. Both of his parents, now deceased, were Iranian citizens. Three of Applicant's siblings are citizens and residents of Iran. His oldest sister is 72 years old and a former homemaker. She is supported by her deceased husband's retirement benefits from the government.⁽¹¹⁾ Applicant's brother is 70 years old and retired from a government job in telecommunications.⁽¹²⁾ He presently works for a private company.⁽¹³⁾ Applicant's other sister is 68 years old and lives with her husband who worked in the former Shah's army.⁽¹⁴⁾ None of these siblings are agents for the government.⁽¹⁵⁾

Prior to seeing his oldest sister in 2000 at a family reunion in Italy, he had not seen her since 1984.⁽¹⁶⁾ He has not seen his other brother and sister since 1984. He calls his sisters once a year at their New Year and speaks to his brother about four times a year.⁽¹⁷⁾ He has limited communication with them due to the passage of time and differences in age and education.⁽¹⁸⁾ They do not know where he works. They think Applicant is a university professor in the United States

because he was a professor in Iran. [\(19\)](#)

Applicant's oldest brother resided in Iran until he died in November 2004 at the age of 74. [\(20\)](#) One of his brother's sons is a teacher who is trying to secure a teaching position with the Iranian government. Other than speaking to him at the time of his brother's death in November 2004, Applicant has no contact with his nephew. [\(21\)](#)

Applicant's other brother is 64 years old. He has resided in Italy for twenty or more years and is a naturalized Italian citizen. [\(22\)](#) Before emigrating to Italy, he was the president of a major Iranian university for a number of years, until he was forced to resign his position by the Islamic regime. [\(23\)](#) Fearing for his life, he left Iran with his Italian wife in 1981. [\(24\)](#) For a number of years he was an advisor to an international organization before retiring and starting his own institute. [\(25\)](#) Applicant saw his brother in 2000 at a family gathering in Italy that his brother arranged. They speak once a month. [\(26\)](#) For a period of time Applicant sent \$500 every quarter to his brother to help pay for medicine to send to his oldest brother in Iran. [\(27\)](#)

In 1992, Applicant renewed his Iranian passport so he could sell his apartment in Iran. [\(28\)](#) His oldest brother handled the matter for him and sent Applicant \$22,000 as the proceeds from the sale. Applicant never traveled on that passport and it expired five or more years ago. [\(29\)](#) He has no other financial interests in Iran. [\(30\)](#) The last time he traveled outside of the United States was in 2000, when he went to Italy to see his brother and sister. [\(31\)](#)

After leaving Iran in 1984, Applicant vowed he would never go back. He was angry at the intimidating treatment he received from the government, despite being "one of the highest educated people" and "best teachers" in the university. [\(32\)](#) He acknowledged that if he were to return to Iran his life would be in danger because of his filial relationship with his brother (the former university president) and the government's perception that he is a dissident. [\(33\)](#) Applicant has great disdain for the present government. [\(34\)](#) He offered assurances that he would report any foreign threats to the appropriate authorities and is loyal to the United States. [\(35\)](#)

Applicant is considered trustworthy by two of his professional colleagues. [\(36\)](#)

Since the 1979 revolution, Iran and the United States have been adversaries. Impediments to improved relations with Iran include Iranian efforts to acquire nuclear weapons and other weapons of mass destruction; its support for and involvement in international terrorism; its support for violent opposition to the Middle East peace process; and its dismal human rights record. [\(37\)](#)

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽³⁸⁾ The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty.⁽³⁹⁾ Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information.⁽⁴⁰⁾ The Directive presumes a nexus or rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability.⁽⁴¹⁾

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of

rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ⁽⁴²⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." ⁽⁴³⁾

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

Guideline B - Foreign Influence: A security concern 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 not citizens of the United States or 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.

Guideline B's disqualifying and mitigating conditions, raising either security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and the application of the appropriate adjudicative factors and legal standards, including the "whole person" concept, I conclude the following with respect to the allegations set forth in the SOR:

The government established its case under Guideline B. Based on the evidence in this case Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1. (*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*), applies to this case. Applicant's two sisters, brother and nephew are citizens and residents of Iran. While the mere possession of such families ties is not automatically disqualifying, it raises security concerns sufficient to require an applicant to rebut, extenuate or mitigate the concern and establish that it is clearly consistent with the national interest to grant him a clearance. ⁽⁴⁴⁾

I considered all the mitigating conditions under Guideline B pertinent to Applicant's family living in Iran, and specifically: (1) Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), 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*), and (2) FI MC E2.A2.1.3.2. (*Contact and correspondence with foreign citizens are casual and infrequent*). After doing so, I conclude neither applies.

Although there is no evidence to establish that any of Applicant's siblings and nephew are agents of a foreign power, the hostility of Iran to the United States places a heavy burden on Applicant to demonstrate that the immediate family members in Iran do not pose security risks and he is not in a position to be forced to choose between loyalty to the United States and his family members. With that adversarial stance and its dismal human rights record, it is conceivable that Iran would target any citizen in an attempt to gather information from the United States. Unfortunately, those circumstances, in addition to Applicant's former history at the university, place his siblings in a situation that could create a potential source of exploitation for Applicant in the event the government discovered his whereabouts. This mitigating condition (FI MC E2.A2.1.3.1) does, however, apply to Applicant's nephew because he is not an immediate family member and does not have close ties to Applicant.

Since leaving Iran in 1984, Applicant has consistently maintained contact with all of his siblings. He telephones his sisters on a yearly basis and calls his brother in Iran about four times a year. Given the totality of the communication over the years and his previous medical assistance to his deceased brother, the contacts cannot be construed to be casual or infrequent, but rather an indication of a connection to his family. Regrettably, the fact that he holds some affection for his family places him in a position of vulnerability, such that Applicant's case is not mitigated under FI MC E2.A2.1.3.2.

The evidence clearly established Applicant is a loyal, trustworthy United States citizen who loves this country and his family. He has done nothing wrong. I gave significant consideration to Applicant's numerous ties with the United States, his 31 years of residing here, a distinguished career, a list of impressive academic achievements and a sincere demeanor while testifying. Applicant insists he would report any foreign contacts and that he is not vulnerable to foreign coercion or influence. But the mitigating condition "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."⁽⁴⁵⁾ With three siblings in Iran, Applicant was unable to establish they are not in a vulnerable position.

As noted above, the decision to deny an individual a security clearance is not a judgment of an applicant's loyalty.⁽⁴⁶⁾ It is merely a determination that the applicant might pose a security risk in the future based on the strict guidelines set out by the President and the Secretary of Defense.

Therefore, I am persuaded by the totality of the evidence that it is clearly not consistent with the national interest to grant Applicant a security clearance. Accordingly, allegations 1.a.-1.c. of the SOR are decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline F (Foreign Influence) AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: For the Applicant

DECISION

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

Shari Dam

Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated April 5, 2003) at 1.
2. Government Exhibit 2 (Statement of Applicant, dated March 11, 2004) at 6.
3. Tr. 62.
4. Government Exhibit 2, *supra* note 2, at 2.
5. Tr. 39.
6. Government Exhibit 2, *supra* note 2, at 1.
7. Government Exhibit 1, *supra* note 1, at 1.
8. *Id.* at 6.
9. *Id.* at 8.
10. Government Exhibit 2, *supra* note 2, at 1.
11. Tr. 21.
12. *Id.*
13. Tr. 22.
14. Government Exhibit 2, *supra* note 2, at 4.
15. Tr. 36.
16. Tr. 14.
17. Tr. 16 and 47-48.
18. Tr. 44-45.
19. Tr. 15.
20. Tr. 15.
21. Tr. 49.
22. Tr. 24.
23. Tr. 18.
24. Tr. 26.
25. Tr. 24.
26. Tr. 48.
27. Tr. 51.
28. Tr. 65.
29. Tr. 67.

30. Tr. 65.
31. Tr. 15.
32. Tr. 38.
33. Tr. 27 and 41.
34. Tr. 41.
35. Government Exhibit 2, *supra* note 2, at 6.
36. Tr. 76 and 82.
37. Government Exhibit IV (US Department of State Memorandum on Iran, dated February 28, 2005).
38. Directive, Enclosure 2, ¶ E2.2.2.
39. Executive Order 10865, § 7.
40. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
41. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).
42. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15.
43. *Id.*
44. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at 33-34 (App. Bd. Feb. 8, 2001).
45. ISCR Case No. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005).
46. Executive Order 10865 § 7.