

DATE: October 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09728

ECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's brother and two sisters are citizens and residents of Iran. He last saw them in 1975. In the past 30 years, he has had infrequent written correspondence with them due to his poor command of the written Farsi language. His telephone contact with them has also been extremely limited. He last talked with his sister in 2004, following the death of their mother. The record evidence is sufficient to mitigate or extenuate the negative security implications of having siblings who are citizens of a foreign country. Clearance is granted.

STATEMENT OF THE CASE

On December 15, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns were alleged under Guideline B (Foreign Influence). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 22, 2004, Applicant answered the SOR and requested a hearing. On April 27, 2005, I was assigned the case. On June 22, 2005, a Notice of Hearing was issued scheduling the hearing which was held on June 30, 2005. On July 12, 2005, DOHA received a copy of the transcript (Tr.).

FINDINGS OF FACT

In his response to the SOR, Applicant admits he has two sisters and a brother who are citizens and residents of Iran. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 51-year-old testing and systems engineer who has worked for a defense contractor since October 1984 and is seeking to maintain a secret security clearance. Applicant's manager would rate him as excellent and as very

trustworthy (Tr. 72). Applicant is regarded by those who know him as a very hard-working, extremely trustworthy, a fine person, a solid family man, a good neighbor, a man of principle, and a good citizen.

In January 1973, Applicant, then age 18, left Iran to pursue his education in the U.S. In 1976, he received a BS degree and in 1978 he received a master's in physics. He chose the college he attended because his cousin was a professor at the college. In August 1984, he became a naturalized U.S. citizen (App Ex A). Following graduation, he worked at as a parking manager and a part time instructor at a junior college.

His parents are deceased. His mother died in March 2004. He has two sisters and a brother whom he has not seen in 30 years who live in and are citizens of Iran. Applicant last traveled to Iran in 1975 when he spent one month visiting his relatives. In the past 30 years he has talked with his siblings five or six times (Tr. 34), when they happened to be at his mother's when he called, and maybe one or two other times when they called him. He also called his one sister because she was living with his mother at the time of his mother's illness (Tr. 40). When Applicant heard his mother was ill, he called her once a month.

His siblings have written him a few times during the last 30 years. His command of the written Farsi language is poor. In March 2004, he last wrote his sister to express his sympathy over their mother's death. Applicant does not have his sibling's current addresses, nor does he know their current telephone numbers.

In March 1980, he married to a U.S. citizen and has been married to his wife for 25 years. They have two children, one in college and one who has graduated from college. Applicant and his wife have a home, car, savings accounts, and other financial assets in the U.S. He has no property in Iran. He is active in the PTA and in his church. He would bear arms to protect the U.S. even if it meant fighting against Iran (Gov Ex 2) He believes the current regime in Iran is harmful to the country and its citizens. He has no respect for it. He has no intention of ever traveling to Iran.

Applicant's mother visited him twice in the U.S. One visit was two months long and the other three months. The visits were difficult because his mother did not speak English. His mother is the only relative of his that his wife and daughters ever met.

Applicant's brother was a political prisoner in 1985 and was released in 1989 or 1990. His brother was held as a political prisoner by the new regime because he had worked for the former Shah's government. Although his brother was imprisoned, Applicant did not know about the imprisonment when it was occurring. Applicant talked infrequently with his brother. His brother is married and has a son, but Applicant does not know what his brother does for a living (Tr. 45). Applicant believes one of his sisters is married to a retired bank manager.

If ever approached to reveal information with threats of harm to his siblings, Applicant would immediately report it to the company security office and to the FBI. He would not comply with the demands placed on him (Tr. 43).

Administrative or official notice was taken of certain facts concerning Iran as specified by Department Counsel in Government Exhibit 4 through 11. Three areas are highlighted as follows:

Iran is hostile to the interests of the U.S. and it continues to be one of seven countries the U.S. State Department has designated as a state sponsor of terrorism. Iran is making efforts to acquire weapons of mass destruction. Iran has a poor record of human rights and the government continues to commit numerous and serious abuses, including summary executions, torture, and other degrading treatment of prisoners, arbitrary arrest and detention, and violence against women.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular

condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline B (Foreign Influence).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽²⁾

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

Foreign Influence. A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she maybe 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.

The Government established the Applicant's brother and two sisters are citizens and residents of Iran. Disqualifying Condition (DC) 1 (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.

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the administrative judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced or is brought under control or used as a hostage by a foreign intelligence or security service. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. ⁽³⁾ The entire record must be considered in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.

It is presumed that the relationship between siblings is close. However, the evidence of this case fails to establish a close relationship. Applicant last saw his three siblings in 1975--30 years ago. In the past 30 years, Applicant and his siblings have exchanged few letters because his command of the written Farsi language is poor. Less than a dozen letters have passed between them in 30 years. And infrequent telephone calls have also been made or received. The last call was in 2004, to his sister following their mother's death. He does not have his siblings' current addresses or telephone numbers. Mitigating Condition (MC) 3 (E2.A2.1.3.3. *Contact and correspondence with foreign citizens are casual and infrequent*) applies.

Applicant's ties to the U.S. are relevant in assessing whether he is in a position to be forced to choose between his family members and his obligations to the United States. As a teenager Applicant came to the U.S. to continue his education. He received his graduate and post graduate schooling in the U.S. He has lived in the U.S. for 32 years and in 1984, he voluntarily acquired U.S. citizenship. Married to a U.S. citizen, he is the father of two children and has been employed by the same defense contractor since 1984.

Any security concern about his mother ended with her death in March 2004. I find for Applicant as to SOR 1.a. In light of the entire record, I conclude Applicant is not likely to jeopardize the security of his immediate family members by succumbing to any undue foreign influence on siblings with whom he has no direct contact. I find for Applicant as to SOR 1.b. Accordingly, Applicant has successfully mitigated the security concerns, and Guideline B is decided for him.

FORMAL FINDINGS

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

Paragraph 1 Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: 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 or continue a security clearance for Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
3. ISCR Case No. 98-0419 (April 30, 1999) at p.5.