

DATE: June 30, 2006

In Re:

SSN: -----

Applicant for Trustworthiness Determination

P Case No. 04-11369

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's two brothers are citizens and residents of Iran. Since leaving Iran in 1977, Applicant has visited Iran in 1990 and 2004. He has mitigated the trustworthiness concerns and his eligibility for assignment to a sensitive position is granted.

STATEMENT OF THE CASE

On August 10, 2005, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny an application to occupy an Information Systems Position designated ADP I/II for Applicant. The action was taken under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, as amended (Regulation), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). The SOR alleges security concerns under Guideline B (Foreign Influence).

On August 27, 2005, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On November 14, 2005, Applicant received a complete copy of the government's file of relevant material (FORM) dated September 14, 2005. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On December 3, 2005, Applicant responded to the FORM and submitted a letter and two documents which were admitted as Applicant's Exhibit (App Ex) A. On January 6, 2006, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security concerns under the Guideline for Foreign Influence. Applicant admits he has two brothers who are residents and citizens of Iran and he visited his family in Iran in 1990 and 2004. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

Applicant is 53 years old, has worked for the government as a software engineer since 1989, and is seeking a trustworthiness determination. In December 1995, Applicant received security approval for his work and in April 1998 he was granted an exemption to the ADP-II policy because he was not yet a citizen. He has received a commendation for his work performance. (App Ex A)

Applicant was born and lived in Iran until 1977, when at age 24, he came to the U.S. In January 1983, Applicant married his wife who was born in Iran. His wife has no close relatives living in Iran. Her parents are retired and are U.S. residents living in the U.S. Because of their English language skills, they are unable to pass the U.S. citizenship examination. Her brother, and sisters, and in-laws are U.S. citizens and residents. Applicant's two children were born in the U.S. in 1988 and 1993. Applicant states he would never do anything against the country where his children were born or raised (App Ex A).

In 1990, Applicant traveled to Iran and stayed with his brother for two weeks. This was his first trip to the country in 13 years. In 2003, Applicant's mother died in Iran. Since her death, Applicant has not had a relationship with his oldest brother. Applicant last had a telephone conversation with this brother in 2000. They are not close due to some "old family issues." (Gov Ex 5) Applicant is in contact with his other brother who is handling his mother's estate. Applicant calls this brother once a month. This brother has been trying for the past few years to immigrate to the U.S.

In 2004, Applicant went to Iran for three weeks to take part in a memorial for his mother and sign the necessary escrow paperwork to liquidate his mother's estate. Applicant fully informed his supervisor and many colleagues of his two trips. He does not plan on returning to Iran.

Applicant and his brother practice a religion not associated with Islam and not sanctioned by the Islamic Government of Iran. (App Ex A) All practitioners of non Muslim religions combined represent less than one percent of the Iranian population. The fundamental tenets of his religion are good thoughts, good words, and good deeds. His religion believes in freedom of choice and human liberty.

On September 14, 2001, Applicant became a U.S. citizen. When Applicant became a U.S. citizen he swore allegiance to the U.S., he also swore to protect the interests of the U.S. He would never do anything contrary to U.S. interests even if the Iranian or other government would attempt to use his relatives to extract information (App. Ex. A).

The U.S. Department of State Consular Information Sheet on Iran as of September 26, 2005 (Item 8) and the U.S. Department of State Travel Warning on Iran as of June 30, 2005 (Gov Ex 9) were part of the FORM. The material highlights three areas of concern: 1.) 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; 2.) Iran is making efforts to acquire weapons of mass destruction; 3.) 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 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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information."

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation

sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he or she may be bound by affection, influence, or obligation, are (1) not citizens of the United States or (2) 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." DoD 5200.2-R, Appendix 8. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.*

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. DoD 5200.2-R, ¶ C8.2.1. Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

The government has presented evidence sufficient to raise a concern under Guideline B. Foreign Influence Disqualifying Condition (DC) 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 this case. Applicant's brothers live in and are citizens of Iran. This could create the potential for foreign influence that could result in the compromise of classified information. The mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. ⁽¹⁾ However, such ties do raise a security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation.

The mitigating conditions (MC), particularly MC 1 (*A determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk*) were considered. Notwithstanding the facially disjunctive language of this mitigating condition, Applicant must prove that his brothers are not agent of a foreign power, and are not in a position to be exploited by a foreign power in a way that could force Applicant to chose between the person(s) involved and the U.S. ⁽²⁾

The record is silent as to Applicant's brother's occupations. However, the brother he talks with practices a religion not associated with Islam and not sanctioned by the Islamic Government of Iran. As such it is extremely unlikely the brother works for the Iranian government or military. His brother is not an agent of a foreign power. See 50 U.S.C. § 438 (b).

The second prong of the test is whether the relatives in question are "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."

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. 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 risk and he is not in a position to be forced to choose between loyalty to the United States and his family members. With its 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.

Likewise, MC 3 (*Contact and correspondence with foreign citizens are casual and infrequent*) applies as to one of his brothers. Applicant has not had a relationship with his oldest brother since his mother's death in 2003. Applicant's last telephone conversation with this brother was in 2000. They are not close due to some "old family issues." His contact with this brother is casual and infrequent.

Finally, none of the individual family circumstances discussed above are determinative. In assessing whether an applicant is a security risk because of his relatives or associates in a foreign country, it is necessary to consider all relevant factors. The "whole person concept"--not the potentially disqualifying or mitigating conditions--is the heart of the analysis of whether an applicant is eligible for a security clearance. The "whole person concept," includes consideration of Applicant's evidence of his family's absence of governmental connections; financial dependence, or lack thereof, on the government; or business connections susceptible to industrial espionage. To ignore such evidence would establish a virtual per se rule against clearing applicants with foreign family ties. Likewise, while the nature of Iran's government, its human rights record, and its relationship with the U.S. are clearly not determinative, they are relevant factors to be considered.

Applicant has lived in the U.S. for 29 years and been a naturalized U.S. citizen since 2001. He has put his interests in the U.S. ahead of his loyalty to his birth country. He has had not sought to continue any ties and contact with Iran. Applicant traveled to Iran in 1990 and then in 2004 for his mother's memorial. He fully informed his supervisors and colleagues of both trips. He had been away from his family for 13 years when he returned for two weeks in 1990. It was another 14 years before he returned for his mother's memorial and was in Iran for three weeks. Spending five weeks in Iran in 29 years shows minimal contact with Iran. He has no intention of ever returning to Iran.

Applicant's closest family members are his wife and two children. His children are U.S. born citizens, who live with him. Because his wife and children are in the U.S., they are not vulnerable to coercion or exploitation by a foreign power. Applicant states he would never do anything against the country where his children were born and raised and would never do anything contrary to U.S. interests even if the Iranian or other government would attempt to use his relatives to extract information.

Applicant is a mature individual with a history of service to this country. Because of Applicant's long-standing relationships and loyalties in the U.S., he can be expected to resolve any conflict of interest in favor of the United States. I find the potential for pressure, coercion, exploitation, or duress does not constitute a security risk. After considering carefully the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. I conclude Applicant has mitigated any potential security concerns arising from Applicant's brothers being citizens and residents of Iran.

FORMAL FINDINGS

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

Paragraph 1 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. ISCR Case No. 99-0424, 2001 DOHA LEXIS at 33-34 (App. Bd. Feb. 8, 2001).
2. ISCR Case No. 02-14995 at 5 (App/ Bd. July 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power").