

DATE: September 14, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12424

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign family ties, his deliberate falsification of a sworn statement to DSS, and his past association, including membership and participation in a foreign terrorist organization, has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On March 18, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on April 12, 2005, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on June 8, 2005, consisting of eleven government documents, referred to Government Exhibits 1 through 11. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on June 21, 2005, and he submitted a reply dated June 25, 2005. The case was assigned to the undersigned for resolution on August 3, 2005.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the contents of the FORM, and the Applicant's reply to the FORM. The Applicant is 50 years of age, married and has a Ph.D. He is employed as a Systems Engineer. He seeks a security clearance in connection with employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible

for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born and raised in Iran. He lived in England for an extended period of time and then moved to the United States. He became a naturalized citizen of the United States in October 1996. The Applicant admits that his father is a citizen of and resides in Iran. Prior to his father's retirement in 1977, his father was a communication engineer for the Ministry of Post, Telegraph and Telephone for the Iranian government. The Applicant states that his father is in the process of moving to the United States. There is no evidence in the record as the frequency of his contacts with his father, what his father's assets are, if any, in Iran, the amount of time his father spends in Iran each year, the status of his father's dual citizenship, or whether his father is still associated with the Iranian Government to any extent. There is evidence in the record that the Applicant has other relatives in Iran. He states that he is not close to his family in Iran.

From 1984 to at least the late 1990's, the Applicant was a member and participated in activities of the "Mujahedine-e Khalq" also known as the "National Council of Resistance" (NCR), whose goals were in furtherance of the interest of the people of Iran. The United States Department of State has named this organization as a terrorist organization. (*See Government Exhibit 9*).

The Applicant explained that after obtaining his doctorate degree in the United States in 1984, he met a few colleagues who were supporting a group called the Society of Scholars and Professionals which was comprised of intellectuals of Iranian descent. The Applicant joined the organization. The group supported the policies and goals of the NCR. The Applicant attended the meetings and helped in the meeting where members of the local community of Iranian scholars and professionals were invited. The purpose of these meetings was to explain the goals of the society and the reason or the society's support of the NCR and the opposition to the regime in Iran. The Applicant made regular contributions of \$150.00 per month to the society to help cover the cost of the meetings and the office that was rented to facilitate the activities of the society. The Applicant also participated in local rallies held by the society.

In the late 1980's, supporters of NCR started a weekly one-hour television program called "Sima Axadi". The program centered on opposition to the regime in Iran and support of NCR. The content was news, entertainment, politics, and social and cultural issues. In the mid 1990's the Applicant became the news anchor person for the program. The producer would prepare the text for the program, and the Applicant taped the news portion of the program in a small office rented by the supporters of NCR. The Applicant became a public face for the program. At some point, the Applicant started to feel the pressure of being on television on a regular basis. He was recognized by many in the general public who had seen him on television. Although he enjoyed doing the news broadcast, he stopped doing the program in 1997. (*See Applicant's Response to the FORM dated June 25, 2005*).

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

In a signed sworn statement dated August 12, 2003, before an agent of the Defense Security Service, (DSS) when questioned about his associations with persons and organizations whose interest may be harmful to the United States, the Applicant stated, "I have never established or continued a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist or nation, whose interests may be harmful to the interests of the United States." (*See Government Exhibit 6*).

In this sworn statement, the Applicant failed to indicate that he had been a member of and participated in the activities of the "Mujahedin-e Khalq", also known as the "National Council of Resistance", (NCR) from at least approximately 1984 to at least the late 1990's. (*See Government Exhibit 7*). The Applicant also knew at the time that he completed the application that the "Mujahedin-e Khalq", also known as the NCR, had been identified by the United States as a terrorist organization. (*See Government Exhibits 6, 7, 9 and 10*).

I find that the Applicant knew or should have known to reveal his association with this organization to the Government in his sworn statement to DSS. The fact that he did not, indicates that he attempted to hide this information. I do not find the Applicant credible. Accordingly, I find that the Applicant deliberately attempted to conceal this information from the Government in his sworn statement to DSS.

Paragraph 3 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The conduct set forth under Paragraph 2, specifically the fact that the Applicant deliberately provided false information on his sworn statement to DSS, constitutes a violation of federal law, Title 18, United States Code, Section 1001, a felony.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

A security risk 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: (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.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

Condition that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

Condition that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Condition that could mitigate security concerns:

None.

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates foreign influence may be prone to provide information or make decisions that are harmful to the interests of the United States. Close family ties and associations with foreign organizations raise legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts and acts of falsification have a direct and negative impact on his suitability for access to classified information.

With respect to Guideline B, the Applicant has foreign contacts and family ties in Iran. His immediate family members, in this case his father is a citizens of Iran and resides there. The Applicant has not shown that his contacts are infrequent and casual. It is also not clear whether the Applicant's father remains associated with the Iranian government. Under these particular circumstances, there remains the possibility of pressure being placed on his foreign relatives, specifically his father, and through him, on the Applicant. It is the Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. He has not done so. In addition, although the Applicant claims that he is not close to his family in Iran, he has stayed informed with the Iranian political regime. Accordingly, I cannot say that he would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Disqualifying condition *(1) An immediate family member, or 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 under Guideline B. None of the mitigating factors apply. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

With respect to Guideline E, the Applicant failed to reveal his association with a terrorist organization, the "NCR", in his sworn statement to DSS. With the particular evidence that I have been provided, there is no reasonable excuse for this. Consequently, the evidence shows that the Applicant cannot be trusted. He attempted to hide this information and has not been completely honest with the Government. Disqualifying Condition *(2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. None of the mitigating conditions are applicable. I find that the Applicant deliberately failed to reveal this information to the Government.

Under Guideline J (Criminal Conduct), Disqualifying Conditions *(1) any criminal conduct, regardless of whether the person has been formally charged* and *(2) a single serious crime or multiple lesser offenses* are clearly applicable. None of the mitigating conditions apply. The Applicant's deliberate falsification is a violation of Title 18, United States Code, Section 1001, a felony. There is no clear indication of the Applicant's rehabilitation. Accordingly Guideline J is found against the Applicant.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B, E and J of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines B, E or J.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant 1.b.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b: Against the Applicant

Paragraph 3: Against the Applicant.

Subparas. 3.a.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge