

KEYWORD: Foreign Influence

DIGEST: Applicant was born and raised in Iran. He attended college and graduate school in the U.S. and, after completing his education, chose to remain in the U.S. He married an Iranian born national he met in the U.S., and they have two children. He is employed as a software engineer for a defense contractor. His parents, two sisters, and one brother-in-law are resident citizens of Iran. He successfully mitigated foreign influence concerns regarding his brother-in-law, but was unable to mitigate concerns for his remaining immediate family members in Iran. Clearance is denied.

CASENO: 04-12732.h1

DATE: 02/21/2006

DATE: February 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12732

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Jeff Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born and raised in Iran. He attended college and graduate school in the U.S. and, after completing his education, chose to remain in the U.S. He married an Iranian born national he met in the U.S., and they have two children. He is employed as a software engineer for a defense contractor. His parents, two sisters, and one brother-in-law are resident citizens of Iran. He successfully mitigated foreign influence concerns regarding his brother-in-law, but was unable to mitigate concerns for his remaining immediate family members in Iran. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 22, 2005, DOHA issued a Statement of Reasons (SOR) ^(U) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on May 10, 2005, and elected to have a hearing before an administrative judge. DOHA received the case on June 8, 2005, and it was assigned to me the same day. On June 14, 2005, DOHA issued a notice of hearing scheduling the case to be heard on June 22, 2005. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, the Government presented six exhibits, which were marked as Government Exhibits (GE) 1 through 6, without objection. Applicant presented eight exhibits, which were marked as Applicant Exhibits (AE) A through H, without objection. DOHA received the transcript (Tr.) of the proceeding on July 6, 2005.

FINDINGS OF FACT

In his Answer, Applicant admitted the SOR allegations, but denied he had close ties of affection for any of his family

members living in Iran. His admissions are incorporated into my findings, and after a thorough review of the record, I make the following findings of fact:

Applicant is a 49-year-old married man employed as a software engineer for a defense contractor. He has been with his current employer since February 2000. Applicant seeks a security clearance for the first time. The government agency where Applicant is detailed has a site requirement that all personnel must have a clearance. Tr. 53-54.

Applicant was born and raised in Iran. In August 1975 at age 19, Applicant came to the U.S. to attend college on a student visa. In December 1979, Applicant was awarded a bachelor of science degree, majoring in mechanical engineering. In August 1983, Applicant was awarded a master's degree in nuclear engineering. (2) In May 1988, he was awarded a second master's degree in computer science. Applicant's father fully supported him while he was in college. Tr. 33.

In May 1982, Applicant married his wife, a native-born Iranian citizen he met in the U.S., who became a naturalized U.S. citizen in August 1995. In February 2000, Applicant became a naturalized U.S. citizen and in December 2000, he was issued a U.S. passport. Applicant has two U.S. born children, a daughter in college, and a son in high school. Applicant possessed an Iranian passport issued to him in 1974, which he used to enter the U.S. in August 1975. He used this passport for a family visit in approximately 1977. Tr. 34. This passport expired in 1978. In October 1999, Applicant renewed his Iranian passport. In March 2001, he returned to Iran for a family visit following his father's heart surgery.

In May 2002, Applicant attempted to relinquish his Iranian passport following an interview with the Defense Security Service (DSS), wherein, he was informed of DoD policy prohibiting possession of a foreign passport while holding a security clearance unless sanctioned by the U.S. government. (3) Applicant attempted to surrender his Iranian passport to the Immigration and Naturalization Service (INS), but was informed by INS they did not have the authority to accept an Iranian passport. Applicant cut off the corners of his passport, and the passport expired in 2004. GE 2.

In 1985, Applicant's father retired from the Iranian Army as a senior officer after approximately 30 years of service. He receives a military retirement from the Iraqi government. In 1995, Applicant's mother retired as a high school teacher. She receives a pension, which is funded by government and private funds. Tr. 37. Applicant has no idea of his parent's political affiliations. Tr. 37-38. Applicant testified that neither his father nor any of his family members are involved in Iran's nuclear power program. Tr. 36.

Applicant has two adult sisters living in Iran. One sister is a college graduate and a homemaker, whose husband is a self-employed civil engineer. They have five children. Applicant's other sister is a high school teacher, whose husband is a freelance architect. They have three children.

In Applicant's signed, sworn statement to DSS dated July 31, 2003, he described his contact with his family in Iran as follows:

I have approximately monthly telephonic contact with my family in Iran. I call them or they will call me. I also email my sister, . . . and her daughter approximately bi-weekly. We send each other family pictures and talk about our families. I have no other contact with anyone outside of the US.

In Applicant's Response to SOR dated May 10, 2005, when describing contact with family members in Iran, he stated:

I do not admit that: I have close ties of affection or obligations to my parents. I do not admit that: I have close ties of affection or obligation to my two siblings. In fact, I have no contact with my siblings and/or their families and do not know of their where abouts (sic) in Iran. I do not admit that: I have close ties of affection or obligation to my brother-in-law. In fact, I have no contact with brother-in-law and/or his family and do not know his where about (sic) in Iran.

When describing contact with his family in Iran, Applicant testified at his hearing:

Questions by Department Counsel:

Q. Now, sir, even though you have I guess - what is it? - monthly maybe telephone contact with your family?

A. That's questionable, yeah.

Q. Well, whatever contact you do have, do you still have a feeling of a family bond towards your parents?

A. A little bit toward my parents as a respect, not as an obligation or any kind of bond that, you know, is, as they say here, about affection. It's nothing like that. You know, we didn't talk - we didn't communicate for 15 years. That tells you a lot. Tr. 38.

Applicant explained the 15-year family rift occurred as a result of a "personality conflict" between his wife and his mother when his parents were visiting them in 1986. Applicant testified during this time he did not speak to his parents for 15 years. Tr. 39. In 1990, Applicant's wife took their two children to Iran for a family visit, and while there his children visited his parents. Tr. 42.

Applicant has a brother-in-law, who is a resident citizen of Iran. He and his Iranian wife are both anesthesiologists living and working in Iran. They have two children. Applicant's contact with his brother-in-law is limited to occasional telephone calls on birthdays or holidays. GE 2.

Applicant has one brother, who lives in the U.S. He is married to a former Iranian citizen. Applicant's brother and sister-in-law are naturalized U.S. citizens.

Applicant submitted a document, AE A, at hearing titled "Profile" that described his contact with family members in Iran as follows:

Sister 1: I made about 5 phone calls in the past 30 years. She has never called me. Occasional email 02-03.

Sister 2: I made about 2 phone calls in the past 30 years. She has never called me. No email.

Parents: visited USA in 1986.

Parents: Visited father after heart surgery in 2001.

Parents: Occasional phone calls in past 4 years.

Brother-in-law: no direct phone call or contact.

Applicant's company President described his employment record as "exemplary" and added that he has had consistent

positive performance appraisals. AE B. Another supervisor described Applicant as "very conscientious," a "well-informed performer," a "team player," "dedicated," conscientious, "trustworthy," "innovative," and "most professional." AE F. In short, Applicant is considered to be an asset to his employer, and an employee who is making a contribution. AE B through H.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they 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. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

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." 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 restricted eligibility for access to classified information 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." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. 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. Where the facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's parents are resident citizens of Iran (¶ 1.a); that two of his siblings are resident citizens of Iran (¶ 2.b), and that his brother-in-law is a resident citizen of Iran. A security risk may exist when an Applicant's immediate family, or other persons to whom he 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. Directive ¶ E2.A2.1.1.

The Government established by substantial evidence and Applicant's partial admissions each of the allegations in the SOR-Applicant has immediate family members who are resident citizens of a foreign country. DC E2.A2.1.2.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law,

automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb 8, 2001). It is a mitigating condition if the immediate family members or associates are not agents of a foreign power and are not in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to his family members and loyalty to the United States. MC E2.A2.1.3.1.

Security clearance decisions are not an exact science. Instead, they are predictive judgments about an Applicant's security suitability in light of that person's past conduct and *present circumstances*. *Egan*, 484 U.S. at 528-29. The evidence established that Applicant is a loyal United States citizen. The evidence also established Applicant has strong ties of affection or obligation to immediate family members who are resident citizens of Iran. Although these family members do not appear to be foreign associates or agents of a foreign power, Applicant failed to demonstrate they are not *in a position of vulnerability* such that he could be forced to choose between loyalty to the United States and loyalty to them.

In particular, his father is a retired senior officer from the Iranian Army whose livelihood depends on the Iranian government. His mother, a retired school teacher, depends in part on the Iranian government for her pension. The frequency and level of contact Applicant has with his family in Iran varies as demonstrated in the Findings of Fact. Unfortunately, the lack of consistency in Applicant's responses regarding the nature and quality of his family contact in Iran causes concern regarding his veracity. He is more consistent in his responses about family contact as it pertains to his brother-in-law. Suffice it to say, the evidence supports the notion Applicant has a sense of obligation and loyalty to his parents, and to a lesser extent his two sisters. In the case of his parents, this loyalty would not be unusual for a son, whose father supported him while he sought a higher education in the U.S. This process included a college degree and two master's degrees.

While the record suggests that Applicant is a hard working and loyal U.S. citizen, there is a lingering concern of his having immediate family in Iran during these times of contention between the U.S. and Iran.⁽⁴⁾ The record does support the fact he is in regular contact with at least his parents and to a lesser extent his two sisters.

Applicant's brother-in-law is in the medical profession and Applicant's involvement with him seems minimal at best. As it pertains to Applicant's brother-in-law, I am able to apply MC 1: *A determination that the immediate family member(s), . . . , 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 MC 3: *Contact and correspondence with foreign citizens are casual and infrequent.* Here, established regular contact with Applicant's parents precludes his claiming casual and infrequent contact for MC 3 purposes.

Considering the record evidence as a whole and applying existing guidelines and law, I find against Applicant on this concern as it applies to Guideline B, ¶¶ 1.a. and 1.b.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c. For Applicant

DECISION

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

Robert J. Tuider

Administrative Judge

1. Pursuant to Exec. Or. 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.

2. In late 1983, Applicant was contacted by the Federal Bureau of Investigation (FBI). The FBI was making inquiries, among other things, regarding his future intended use of a nuclear engineering degree. Applicant informed the FBI that he did not intend to return to Iran and added that he could not obtain U.S. employment in that field due to his

immigration status. Consequently, he earned a second master's degree in computer science, a field he thought would make him more employable. GE 2.

3. Assistant Secretary of Defense Memorandum, dated August 16, 2000, for Secretaries Of The Military Departments, et al, SUBJECT: Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Guideline, commonly known as the "Money Memorandum" states in part the possession or use of a foreign passport may be a disqualifying condition unless sanctioned by the U.S. government. The Memorandum further stated that any clearance be denied or revoked unless the applicant surrenders the foreign passport.

4. *See* U.S. Department of State, Bureau of Consular Affairs, Consular Information Sheet, on Iran, dated December 21, 2004. GE 5.