

DATE: June 8, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01775

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Robert R. Bohn, Esquire

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SYNOPSIS

Applicant was born in Iran in 1958, came to the U.S. in 1977, and had lived here ever since, without returning to Iran. He became a U.S. citizen in 1992. He is married and has two young U.S.-born children. His only ties of any kind to Iran are his two elderly parents and two brothers still living there. His dedication to the U.S. is demonstrated by his long service working in the defense sector of our economy. He credibly avers the prompt reporting of any improper contacts. His single period of financial difficulty ended more than 10 years ago with a Chapter 7 bankruptcy, and he is now financially stable. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On September 20, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On November 2, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on November 22, 2005. A Notice of Hearing was issued on February 27, 2006, setting the hearing for March 15, 2006. The Government introduced eight exhibits (GX) 1 - 8) and four Official Notice documents (ON 1-ON 4). Applicant testified, and introduced 29 exhibits (AX) A - CC). The transcript was received at DOHA on March 24, 2006.

FINDINGS OF FACT

Applicant is 48 years old. The February 24, 2005 SOR contains two (2) allegations, 1.a. and 1.b., under Guideline B (Foreign Influence) and two allegations, 2.a. and 2.b., under Guideline F (Financial). Applicant admits allegations 1.a., 1.b., and 2.a. He denies 2.b. All admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

Guideline B (Foreign Influence)

1.a. - Applicant's mother, father, and two brothers are citizens and residents of Iran. Both brothers are interested in moving to the United States but have so far been unable to obtain a visa. A third brother has emigrated to Belgium, but also wishes to move to the United States. .

1.b. - Applicant's father-in-law was a citizen and resident of Iran, but he died in 2003.

Guideline F (Financial Considerations)

2.a. - Applicant petitioned for Chapter 7 Bankruptcy on October 17, 1995. His debts of approximately \$554,493.22 were discharged on January 30, 1996.

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2.b. - Applicant was allegedly indebted to Telephone Company A in the amount of \$15,281.00 plus \$150.00 in costs, per an adversary appellant proceeding filed in April 1996 in U.S. Bankruptcy Court. The Telephone Company's Motion to Issue Execution on the debt was entered on the court docket on August 3, 1999, but the creditor's Motion was later denied by the Bankruptcy Court, in 2000, establishing that no debt as cited in 2.a. is/was owed by Applicant to the creditor.

This was actually a credit card debt arising during a period of home construction problems in the mid 1990s. Applicant took advantage of credit cards being offered him that had lower interest rates. He believes this debt is from a balance transfer and not from purchases. He also believes, and has established, this debt was among those discharged by the Bankruptcy court.

In April 1996, Applicant and his family moved to another state where Applicant had received a good job offer. When he learned about the Appeal, he contacted his attorney and was told the Appeal would likely not succeed. He paid the attorney money to defend the lawsuit. Since 1997, Applicant has obtained yearly credit reports and never saw any debt cited for the Telephone Company.

Applicant learned of the alleged debt from the Defense Security Service in May 2003. He contacted his attorney and received a copy of the Court docket denying the Telephone Company's Appeal (Attachment to SOR, at page 21-4). I find in favor of Applicant as to this allegation.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 pertinent 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics

and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Based on a careful evaluation of the entire record, I conclude the following:

Applicant is a 48-year-old engineer for a defense contractor. He was born in Iran in 1958. He came to the United States in 1977 (at age 19, and before the overthrow of the Shah), and became a naturalized U.S. citizen in 1992. His wife, 48, was also born in Iran, but has also become a U.S. citizen. Applicant has not been back to Iran since he left in 1977. Almost his entire professional career has been in companies working under contract with the Department of Defense and he has made major contributions (see, Response to SOR, page 11).

The "Foreign"-related concerns stated in the SOR are clearly based on his parents, his two brothers, and his wife's father, being citizens of, and residents in, Iran. His father retired 15 years ago from "the Iranian Oil Company." He has not worked since then. Applicant's mother has always been a housewife. Applicant speaks with his parents monthly by telephone. (Response to SOR). One of Applicant's brothers is a self-employed tailor; the other is a computer-aided designer. They last spoke about a year ago. None of them has worked for the Iranian government.

Applicant's parents have strong feelings for the United States and would move here, but for the father's poor health and his reluctance to be a financial burden on Applicant's family. Applicant is still trying to persuade them to move to the United States.

Applicant considers himself to be a U.S. citizen only and he has no foreign passport. His wife is also only a U.S. citizen. They have "loyalty and preference only for the United States and would bear arms against any enemy of the United States" (Response to SOR, page 11). Applicant and his wife have long been active in community affairs and have received recognition for their efforts (Response to SOR, page 11, and Attachment 8). They have done well financially in the U.S., with a gross monthly income of about \$9000.00 and net assets of about \$1,100,000.00. (*Id.*, at page 12) (see, also, AX A, AX B, AX C, AX D, AX E, AX F, AX G, AX H, AX I, AX J, and AX K).

Friends and colleagues speak highly of Applicant. Using terms such as "well respected," "takes pride in his work, which directly helps technically advance our nation," has had no security problems, and is "honest, loyal, and trustworthy," they establish Applicant as a man of integrity, whose word and dedication to the U.S. can be trusted. (AX L, AX S, AX V, AX X, AX Y, and AX Z). At work, he has completed security awareness training (AX AA). His efforts directly helped U.S. military efforts in the Gulf War in 1991 and he has received formal praise for his work accomplishments (Tr at 27-29).

The totality of the evidence indicates that Applicant came to the U.S. as a teenager, was educated in American schools and made himself a part of the American dream. His elderly parents and his brothers in Iran are a fact of life, but only a *per se* rule that anyone with relatives in a foreign country is ineligible to hold a DoD Secret or Top Secret security clearance would mandate an adverse decision in this case. Instead, DoD Directive 5220.6 sets forth mitigating

conditions that would allow a finding of eligibility.

I have carefully considered all documentation, including the different official U.S. publications, all of which describe in considerable detail the basis for the Government's concerns about the Iran in general and Iranian interests in intelligence collection activities against the United States.

All clearance seekers with family in foreign countries have the burden of showing that the risk of improper intelligence activity is minimal and acceptable. Iran is officially recognized as hostile to the United States, which means Applicant's burden of proof is even heavier than for someone with relatives in a friendly country, such as Canada or Mexico (ISCR Case No. 01-26893 (October 16, 2002); Directive, Additional Procedural Guidance, Item 15).

There is no suggestion in the record that Applicant would voluntarily act against U.S. security interests. Rather, the concern is really that Iranian authorities would place pressure on his family members in Iran to persuade Applicant to act against U.S. security interests. There is some evidence (from Applicant), that his parents and brothers are not agents of a foreign power, but there is no evidence one way or the other as to whether they are susceptible to pressure from the PRC government or intelligence agencies and might ask Applicant to act against U.S. security interests

The Guideline's Concern: 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 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.

Disqualifying Condition that is applicable: (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. Mitigating Conditions that are applicable: (1) a determination that the immediate family member(s), . . . 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.

Overall, Applicant has overcome the evidence supporting the Government's concerns, as stated in the SOR. He has demonstrated by unambiguous evidence his unambiguous feelings and support for the United States. I conclude therefrom that the risk of his feeling a need to choose between his family members in Iran and his security obligations to the U.S. are so minimal as to be an acceptable risk.

Guideline F (Financial) - The problem arose out of problems in erecting a new home for his family. Construction costs almost doubled when local authorities placed new restrictions on the building because of concerns about landslides and other matters. Unable to proceed because the lending bank would not furnish any more money, Applicant at first used credit cards to obtain some new funds. Then the housing market in his area "totally collapsed" and Applicant became unable to stay in the home or to sell it (Response to SOR). That situation led to the cited bankruptcy.

It is clear from the record that Applicant has rebuilt his financial situation to the point that future problems can be deemed unlikely to recur. I find no evidence of financial misconduct or abuse of the Bankruptcy process or of any other financial impropriety. Consequently Applicant's bankruptcy, as cited, is not of current security concern.

Under both Guidelines, I conclude that it is clearly consistent with the national interest for Applicant to obtain or continue a DoD security clearance.

FORMAL FINDINGS

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

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Guideline F (Financial) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE