

DATE: July 18, 2006

In Re:

S.S.N.-----

Applicant for Security Clearance

ISCR Case N05-03250

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Candace L. Le'i, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 53-year-old engineer, born in Iran in 1953. She moved to the United States (U.S.) in 1973 to complete her education and never returned to Iran, except for three or four visits over the next 33 years. Her only ties to Iran are with her elderly parents. Her siblings have all moved to the U.S. and became U.S. citizens. She first obtained a security clearance in 1990 and has never had any problems. She has received security briefings and credibly avers her intent to report any improper contacts. She formally renounced her Iranian citizenship and surrendered her expired Iranian passport. She is married to a native-born American and sees herself only as American. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On September 14, 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 September 23, 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 first assigned to another Judge, but was reassigned to me on February 8, 2005. A Notice of Hearing was issued on February 16, 2006, setting the hearing for March 23, 2006. The Government introduced eight (8) exhibits (Government's Exhibits (GX) 1 - 8). Applicant testified, and introduced eight (8) exhibits (Applicant's Exhibits (AX) A - H). The transcript was received on March 30, 2006.

FINDINGS OF FACT

Applicant is a 53-year-old systems engineer for a defense contractor. The September 14, 2005 SOR contains three (3)

allegations under Guideline B (Foreign Influence), and three (3) allegations under Guideline C (Foreign Preference). Applicant does not specifically admit any of the allegations, which I therefore consider to be denials.

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 (71) and father (81) are citizens and residents of Iran. They are her only ties to Iran. Her parents received U.S. Green Cards in the 1980s, and have visited the U.S., but have never moved here for health and language reasons. Her parents owned a home supplies store, but are now retired. Applicant has four sisters and a brother, all of whom emigrated to the U.S. and became U.S. citizens.

1.b. Applicant has occasionally sent approximately \$200.00 to her parents in Iran, on the occasion of Persian New Year, Mother's Day or Father's Day, as a gift of love (Tr at 22, 23). They are retired and living off of savings and investments. (Tr at 27). She clarified that she did not send the money every year, but actually only about four times in 33 years (Tr at 36).

1.c. Applicant traveled to Iran in September or October 1999 and from December 2000 to January 2001, during periods when her security clearance was not active. Her parents visited her three times in the U.S., in about 1996, 1998, and 2002 or 2003. They obtained a Green Card and paid for the trips themselves (Tr at 39, 40).

Applicant calls her parents about "every week," but has been in Iran only three times in the past 33 years (Tr at 20). She is not a part of any "Iranian community" in the U.S. (Tr at 22). She recognizes her obligation to this country and would report any improper contact (Tr at 41, 42).

Guideline C (Foreign Preference)

2.a Applicant exercised dual citizenship with Iran and the United States when she applied for, received, and twice used an Iranian passport, as cited in 2.b., below. She made a "conscious decision" (Tr at 32) and has formally "denounced my Iranian citizenship" as a means of showing her identity as an American (Tr at 21).

2.b. Applicant applied for and received an Iranian passport in August 1996, even though she had been a naturalized U.S. citizen since March 1979, and had a U.S. passport issued in April 1989. She did so because she wanted to visit her parents and had heard that Iranian authorities would still consider her to be an Iranian citizen, and might take away her U.S. passport, leaving her stranded in Iran (GX 2, AX G, Tr at 20, 21).

2.c. Applicant used her Iranian passport to enter and exit from Iran in December 2000/January 2001. Her Iranian passport expired in 2001. Applicant returned it and has no plans for renewing it (GX 2 and Tr at 31).

Her U.S.-born husband is a partner in a pharmaceutical firm. To her knowledge, he has no contact with any foreign government officials (*Id.*). She is aware of her responsibility to report any improper contacts (*Id.*). She received a merit award from her company in March 2006 (AX B). She formally renounced her Iranian citizenship in November 2005 and surrendered her Iranian passport (AX D, AX D, AX E, AX F). She first obtained a security clearance in 1990 (Tr at 23). She and her husband purchased a home in the U.S. about five years ago for \$800,000-\$850,000. She does not own any other property outside the U.S. (Tr at 25).

POLICIES

The Whole Person Concept: Under E2.2.3.of the Directive, the ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an *overall common sense determination* based upon careful consideration of the following, each of which is to be evaluated in the *context of the whole person*. Under E2.2.1., the DoD 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 predicated 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.

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: E2.2.1.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. I have considered all the above factors and find them to lead to a conclusion favorable to 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

Iran is clearly recognized by the U.S. Government as hostile to the U.S., which places a heavy burden on Applicant to overcome the presence of her parents in that country. There is nothing in the evidence establishing that Applicant's relatives in Iran are/may be/might be/could be agents of the Iranian government or are in a position to be used, voluntarily or not, and knowingly or not, to seek to persuade Applicant to act against U.S. security interests. To the degree that there is a risk, it is a hypothetical one, based primarily on the undisputed presence of her parents in Iran and her warm relations with them. What is absent from the record is any evidence supporting an inference that Applicant would feel "forced" to choose between her loyalty to them and to the United States. I find the contrary to be the case.

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 a heavy one (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 might put pressure on her family members in Iran to persuade Applicant to act against U.S. security interests. There is some evidence (from Applicant), that her parents 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 Iranian government or intelligence agencies and might ask Applicant to act against U.S. security interests (ISCR Case No. 99-0511 (December 12, 2000) at pp 8, 9; and ISCR Case No. 00-0485 (February 1, 2002) at p.4).

An Administrative Judge must also consider the Disqualifying and Mitigating Conditions for the specific Guideline(s) cited in the SOR, in the present case, Guidelines B and C.

Guideline B (Foreign Influence) - The 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 Conditions: 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; E2.A2.1.2.8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

Mitigating Conditions: E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother,

sons, daughters, brothers, sisters), cohabitant, 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.

E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security eligibility, since the possibility is minimal that she might receive any sum significant to offset her significant U.S. assets, as is the case here.

Recent Appeal Board decisions have reversed favorable decisions by DOHA Administrative Judges in cases involving fact situations generally similar to, but not identical to, each other and to the present case. These decisions suggest that establishing the validity of Mitigating Condition E2.A2.1.3.1. is extremely difficult, apparently because it necessarily involves proving a negative, i.e., that something that has not happened in the past will not, or is unlikely to, occur in the future.

Guideline C (Foreign Preference) - The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Disqualifying Conditions: E2.A3.1.2.1. The exercise of dual citizenship; and E2.A3.1.2.2. Possession and/or use of a foreign passport; *Mitigating Conditions:* E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country; and E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship. As discussed above, the exercise of dual citizenship consisted of Applicant's obtaining an Iranian passport in 1996 for the sole purpose of visiting her parents in Iran, the reason being that she believed Iran would consider her to be still an Iranian citizen and seize her U.S. passport. She never used the Iranian passport for any other purpose. The expired passport has been surrendered and she has formally renounced her Iranian citizenship. Under the circumstances, her conduct has not suggested any preference for Iran over the United States.

What the Government's evidence focuses on is the presence in Iran of her parents, who are citizens of and resident in that country. At the same time, those relationships have survived for more than 33 years, with Applicant living and working in the U.S., with no apparent security problems. While the lack of past problems does not mean there will not be any problems in the future, it is a positive factor that must be considered along with all other relevant information. The record includes evidence that Applicant has had security sensitivity training and promises to report any improper contacts. Such promises of future conduct may not be considered, by themselves, to be substantial evidence. However, such evidence must be considered in the context of Applicant's long career in America's defense effort and the positive opinions of her company.

The record compels the conclusion that Applicant currently possesses the judgment, eligibility, and trustworthiness required of anyone seeking access to the nation's secrets, and can be relied upon to protect U.S. security interests.

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

Subparagraph 1.c. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. 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