

DATE: January 29, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-17525

## **ECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Eric Borgstrom, Esq., Department Counsel

#### **FOR APPLICANT**

John McDonald, Esq.

John Grasso, Esq.

### **SYNOPSIS**

Applicant is 30 years old and has worked as a systems engineer for a defense contractor for over two years. He and his mother fled Iran in 1984. His father remained due to family and financial responsibilities. Applicant and his mother became naturalized U.S. citizens in 1997. His mother is a dual citizen of Iran and has traveled there three times since leaving. Applicant's father has attempted to obtain a visa to leave, but continues to wait fourteen years after applying. Applicant and his mother communicate weekly with his father and maintain a close familial relationship. Applicant and his mother also have more than a casual relationship with his aunt. Applicant has failed to mitigate the potential security concerns raised under Guideline B, foreign influence. 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 March 30, 2006, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B, (foreign influence) of the Directive. Applicant answered the SOR in writing on April 24, 2006, and elected to have a hearing before an administrative judge. In his Answer, Applicant admitted all of the allegations under Guideline B. The case was assigned to another administrative judge on August 25, 2006. The Applicant requested continuances due to representation issues. The case was eventually reassigned to me on November 22, 2006. A notice of hearing was issued on November 24, 2006, scheduling the hearing for December 11, 2006. I conducted the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance. The Government offered three exhibits for admission in the record and they were marked as Government Exhibits (GE) 1-3. Also offered were five exhibits for administrative notice. There being no objection they were marked as Exhibits I-V and administrative notice was granted. Applicant testified on his own behalf, called two witnesses, and offered seven exhibits for admission into the record. They were marked as Applicant's Exhibits A-G and were admitted into evidence

without objection. Applicant also offered a memorandum summarizing his case. There being no objection, it was marked as Appellate Exhibit I and received. DOHA received the hearing transcript (Tr.) on December 22, 2006.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 30 years old and has been a systems engineer for a defense contractor for over two and a half years. Applicant is an only child and he and his mother reside together in their jointly owned residence. Applicant was born in Iran and left in 1984, when he was eight years old, with his mother, under the guise of visiting relatives in the U.S. (3) Their intent was to escape the regime that had overthrown the Shah. Applicant's father, an Iranian citizen, remained in Iran due to family and financial responsibilities. (4) His intent then and now is to join his family in the U.S.

Applicant's mother found immigration sponsorship in the U.S. In 1992, she and Applicant were required to leave the U.S. so they could then reenter and she could qualify for a green card. (5) Their plan was for Applicant's father to meet him and his mother in Italy and then they would come to the U.S. together. (6) His father's visa was due to expire in five months and he could not leave Iran unless he had at least six months remaining on his visa. He was unable to meet his family in Italy due to the visa issue. He applied for a new visa, but it has not been acted upon. He periodically inquires about its status, but is cautious not to inquire too frequently so as to raise suspicion. (7) Applicant and his mother completed the immigration requirements and both became naturalized U.S. citizens in 1997. His mother had been a nurse in Iran and became a registered nurse in the U.S., supporting herself and her son.

Applicant has never returned to Iran. He does not have an Iranian passport and believed because he was born in Iran he was required to list that he was a dual citizen. (8) He does not consider himself a dual citizen. He believes his mother has an Iranian passport and is a dual citizen of Iran and the U.S. (9) His mother has returned to Iran on three occasions due to her mother's illness. She would stay for approximately 2-3 weeks. Her mother has since died and Applicant's mother's last visit was approximately five years ago. Applicant's mother remains married to his father and she visited him during her three trips to Iran. Neither provide financial support to each other.

Applicant's father is a retired electrical engineer. Prior to retiring he worked for an American company and later as a consultant. He has never worked for the Iranian government and does not receive any government pension. He owns a house and vehicle in Iran and lives off of his savings and earnings from occasional odd jobs. Applicant is unaware of any potential inheritance he may receive and believes any inheritance would go to his mother. (10) Applicant's father's intent is to leave Iran to be with his family in the U.S., but after so many years waiting for his visa he understands that it may never happen. (11)

Applicant and his mother communicate by telephone with his father weekly. He has great affection for his father. He last saw his father when he and his mother fled Iran in 1984. His father is aware that Applicant is an engineer, but does not know who he works for or the nature of his work. They do not discuss his work.

Applicant's aunt is a citizen and resident of Iran. His aunt is his mother's oldest sister who is 60 years old. Applicant visited with her approximately seven months ago while she was in the U.S. for an extended stay of approximately ten months visiting her daughter, Applicant's cousin. His aunt has two daughters who are naturalized U.S. citizens who reside in the U.S. His aunt is a widow who splits her time between Iran and the U.S. When she is in the U.S., Applicant will occasionally visit her. (12) His mother will visit her 3-4 times during her U.S. stay and will talk to her by telephone every couple months when she is in Iran. (13) Applicant's aunt knows his father and when traveling back to Iran will on occasion bring gifts to him from Applicant and his mother. (14)

Applicant's uncle is his mother's brother and a citizen and resident of Iran. He spoke to his uncle approximately five years ago on the telephone. That was the only communication he has had with him in 22 years. (15) He and his mother do not have contact with his uncle. (16)

Applicant and his mother left Iran because they were against the regime. He would like to someday return to visit Iran, but will not do so until there is a regime change and an open policy with the U.S. (17) Under the current political climate of Iran, Applicant does not intend on returning. (18) He acknowledges he does not trust the current regime. (19)

Applicant completed school beyond the second grade in the U.S. He went on to attend college earning a degree. While attending college, he and other classmates and professors were awarded a patent for devices developed to assist the handicapped. He became a licensed emergency medical technician, certified both at the basic and cardiac level. He has been employed in different jobs since he was 15 years old and worked 40-45 hours a week while a full time college student. (20)

Applicant is held in high regard by his supervisor and is considered an outstanding young man. (21) A federal worker who has contact with Applicant through their work believes he does his job extremely well. (22) Both have observed him working in a classified environment while holding an interim clearance and believe him to be very conscientious and that he complied with all of the rules. He has not had any adverse issues regarding his work in this area. (23)

Iran's government is an Islamic republic. (24) The country is governed by secular and religious leaders and governing bodies. (25) "The chief ruler is a religious leader, or in the absence of a single leader a council of religious leaders." (26) The president of the republic is elected by universal suffrage to a 4-year term by an absolute majority of votes and supervises affairs of the executive branch. (27) The Shi'a Muslim clergy dominate the key power structures in Iran and the constitution dictates "all laws and regulations. . . shall be based on Islamic principals." (28) The government has a poor human rights record and serious abuses. The United Nations passed a resolution detailing a serious concern over Iran's human rights record. (29) Abuses include, summary executions, including of minors, disappearances, torture and severe punishments such as amputation and flogging, violence by vigilante groups with ties to the government, arbitrary arrest and detention, lack of judicial independence, political prisoners, severe restrictions on civil liberties and restriction on the rights of citizens to change their government. (30) Iran also maintains ties with terrorist groups and provides safe haven, substantial resources and guidance to such organizations. (31)

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. (32) The government has the burden of proving controverted facts. (33) The burden of proof is something less than a preponderance of evidence. (34) Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. (35) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (36)

No one has a right to a security clearance (37) and "the clearly consistent standard indicates that security clearance (38)

determinations should err, if they must, on the side of denials." Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (39) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (40) It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B-Foreign Influence is a concern because 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 obligations 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 interest 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 would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

### CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards.

Based on all the evidence, Foreign Influence Disqualifying Condition (FI DC) 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*) and FI DC E2.A2.1.2.2 (*Sharing living quarters with a person or person, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*) apply. Applicant's father is a citizen and resident of Iran. His mother is a dual citizen of Iran and the U.S. and has traveled to Iran at least three times since becoming a U.S. citizen. Applicant and his mother live together in a jointly owned residence in U.S. His mother remains married to his father. Both Applicant and his mother communicate regularly with his father and maintain a close familial relationship. This relationship could potentially be exploited. Both FI DC E2.A2.1.2.1 and FI DC E2.A2.1.2.2 apply to Applicant's parents. Although aunts and uncles do not fall within the definition of immediate family members, Applicant's aunt is an individual who can be characterized as having a close tie of affection to both Applicant and his mother. Therefore, I find FI DC E2.A2.1.2.1 applies to his aunt, but not to his uncle. Due to Applicant and his mother's very limited contact with the uncle, I find Applicant does not have a close relationship or ties of affection to him and none of the disqualifying conditions apply.

I have considered all of the mitigating conditions and especially considered Foreign Influence Mitigating Condition (FI MC) 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*), and FI MC E2.A2.1.3.2 (*Contacts and correspondence with foreign citizens are casual and infrequent*). Applicant's father, mother and aunt are not agents of a foreign power since there was no information offered that they are engaged in intelligence work or have any relationship with the government. (41) The question remains whether the relatives are in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his parents and aunt versus the United States. The disqualifying condition requires that a foreign power would exploit its citizens or residents in such a way as to have Applicant act adversely to the interests of the United States. A factor to consider, while not determinative, is the character of the foreign power and entities within the foreign country. This review is not limited to countries that are hostile to the United States. Friendly countries may have profound disagreements with the United States or have engaged in espionage against the United States especially in economic, scientific, military, and technical fields. A friendly relationship is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. The government of Iran is hostile towards the U.S., has a dismal human rights record and sponsors terrorism and terrorist organizations. The concern is that the country of Iran could exploit Applicant's relationship with his family

living in Iran. Considering its human rights record and hostility towards the U.S., the potential for coercion and exploitation exists. Although Applicant is clearly a loyal American, it does not negate the understandably strong ties he has with his family. Therefore, I find FI MC E2.A2.1.3.1 does not apply.

Applicant is close to his father in Iran and speaks with him weekly. Despite the geographical distance he has maintained his relationship for 22 years, exhibiting an endearing commitment to him. His relationship with his father is not casual nor infrequent. Applicant lives with his mother who is a dual citizen. They jointly own property. She travels infrequently to Iran and has exercised her dual citizenship. Their relationship is not casual nor infrequent. Applicant visits with his aunt when she is in the U.S. and uses her as a courier to send gifts to his father. Their relationship is bound by affection and obligation and is more than casual and infrequent. Hence, FI MC E2.A2.1.3.1 does not apply.

Applicant is a well accomplished hard working young man who has clearly overcome adversity to be a productive successful person. However, notwithstanding his accomplishments and loyalty to his adopted country it is his understandable ties with his relatives that creates a position of vulnerability for him. These facts raise reasonable doubts about Applicant's ability to protect classified information unfettered by concerns about family members who may be subject to the interests of a foreign government and thus, his suitability for access to classified information.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person. I considered Applicant's hard working background and accomplishment. I considered his supervisor and coworker's endorsement of him. I considered that while holding an interim clearance Applicant abided by all the rules. I also considered Applicant's close ties to his mother, a dual citizen of Iran and his father, a citizen and resident of Iran. I considered that his father's intent is to immigrate to the U.S. to be with his family, but the Iranian government has not issued him the necessary paperwork after years of waiting. I considered the human rights record of Iran and that they harbor and support terrorism. I find Applicant has failed to mitigate the security concerns regarding Guideline B, foreign influence. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided against Applicant.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

### **DECISION**

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

Carol G. Ricciardello

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960) as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Tr. 52.
4. Tr. 86.
5. Tr. 53.
6. Tr. 53, 89.
7. Tr. 90.
8. Tr. 76, 105.
9. *Id.*
10. Tr. 91.
11. Tr. 102.
12. Tr. 62, 79.
13. Tr. 108.
14. *Id.*
15. Tr. 60-61.
16. Tr. 80.
17. Tr. 108.
18. Tr. 98.
19. Tr. 71.
20. Tr. 58.
21. Tr. 18.
22. Tr. 36.
23. Tr. 24, 38.
24. AN I, U.S. Department of State Background Note: Iran, August 2005, at 3.
25. *Id.*
26. *Id.*
27. *Id.*
28. AN II, U.S. Department of State Country Reports on Human Rights Practices: Iran, dated March 8, 2006.

29. *Id.*

30. *Id.*

31. AN III, U.S. Department of State, Office of the Coordination for Counterterrorism, Country Report on Terrorism 2005, dated April 2006.

32. ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

33. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

34. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

35. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

36. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

37. *Egan*, 484 U.S. at 531.

38. *Id.*

39. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

40. Executive Order 10865 § 7.

41. *See*, 50 U.S.C. secs. 435, 438, and 1801 (b), *See also*, ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004) for a broader definition of "agent of a foreign power."