

KEYWORD: Foreign Influence

DIGEST: The Applicant's mother and four of his siblings are citizens of and reside in Iran. He also has three siblings who reside in France. However, the Applicant has lived in the U.S. since emigrating from Iran in 1984. He has never returned to Iran, and he became a U.S. citizen in 1992. His wife and two children are all Americans. The Applicant obtained both a Bachelors and Masters Degree from an American university. He has also held a security clearance for about ten years. His supervisors and co-workers think most highly of the Appellant, and do recommend that he continue to hold said clearance. Mitigation is shown. Clearance is granted.

CASENO: 06-24149.h1

DATE: 08/07/2007

DATE: August 7, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-24149

**DECISION OF ADMINISTRATIVE JUDGE
RICHARD A. CEFOLA**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esquire, Applicant's Counsel

SYNOPSIS

The Applicant's mother and four of his siblings are citizens of and reside in Iran. He also has three siblings who reside in France. However, the Applicant has lived in the U.S. since emigrating from Iran in 1984. He has never returned to Iran, and he became a U.S. citizen in 1992. His wife and two children are all Americans. The Applicant obtained both a Bachelors and Masters Degree from an American university. He has also held a security clearance for about ten years. His supervisors and co-workers think most highly of the Appellant, and do recommend that he continue to hold said clearance. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On January 30, 2007, 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, 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.

Applicant filed an Answer to the SOR on February 23, 2007.

The case was received by the undersigned on March 15, 2007. A notice of hearing was issued on May 1, 2007, and the case was heard on May 23, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who submitted documentary evidence on his behalf. The Applicant also called three witnesses to testify. The transcript (TR) was received on June 5, 2007. The issues raised here are whether the Applicant's perceived Foreign Influence militates against the granting of a security clearance. [The Applicant admits all of the allegations of the SOR; except for the last allegation, in that he sent his mother money to repay a loan about four or five years ago.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 45 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline B - Foreign Influence

The Applicant emigrated from Iran to the U.S. in 1984 (TR at page 37 lines 6~11). He has never returned to Iran (*Id*). He received both a Bachelors and Masters Degree from an American university (TR at page 43 lines 5~13). He became a U.S. citizen in 1992 (Government Exhibit (GX 1 at page 1). His wife and two children are also Americans (TR at page 38 lines 11~17).

1.a. and 1.g. The Applicant's 65 year old mother is a citizen of and resides in Iran (TR at page 40 lines 8~12, and GX 1 at page 4). She has always been a housewife, and has never worked for the Iranian government (TR at page 50 lines 11~19). He speaks with her "two to three times a year" (TR at page 42 lines 17~22). The Applicant borrowed money from his mother so he could emigrate to the U.S. (TR at page 39 line 20 to page 40 line 7). He has since paid her back, "four or five years ago (TR at page 58 line 11 to page 59 line 1).

1.b.~1.d. The Applicant has three siblings who reside in France (GX 1 at pages 4 and 6). One brother is a "cab driver" (TR at page 50 line 20 to page 52 line 1). Another brother works with computers (TR at page 52 line 20 to page 53 line 19). His sister works with children (TR at page 52 lines 2~19). None of these three siblings work for any foreign government (TR at page 50 line 20 to page 52 line 1, at page 52 line 20 to page 53 line 19, and at page 52 lines 2~19).

1.e. and 1.f. The Applicant has four siblings who are citizens of and reside in Iran (GX 1 at pages 5~6). The Applicant has had little contact with one brother, and does not know what his occupation is, if any (TR at page 54 lines 1~19). Another brother has a business, "like an ice cream parlor" (TR at page 54 line 20 to page 55 line 17). The Applicant also has two sisters. One sister is a retired teacher, and the other works in the health care sector (TR at page 55 line 18 to page 58 line 5). To his knowledge, none of the Applicant's Iranian siblings works for the Iranian government (TR at page 54 line 20 to page 55 line 17, and at page 55 line 18 to page 58 line 5).

The Applicant would report any attempt at coercion vis-a-vis any of his foreign relatives to appropriate authorities (TR at page 38 line 8 to page 39 line 12).

Iran is a state that sponsors terrorism. The U.S. has not had diplomatic relations with Iran since 1980. It is a theocratic Islamic republic in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. Iran's dismal and worsening human rights record presents a further threat to the U.S., as a large number of Iranians emigrated to the U.S. in 1979, after their Islamic revolution. These immigrants often left behind family members in Iran. Iran's security forces often target family members of political prisoners for harassment purposes.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.

d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.

e. Absence or presence of rehabilitation.

f. Probability that circumstances or conduct will continue or recur in the future.”

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his 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 is subject to Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. 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

The Applicant's mother, and four of his siblings, are citizens of and reside in Iran. He also has three other siblings who reside in France. The first and second disqualifying conditions are arguably applicable as this contact “creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” and creates “a potential conflict of interests between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person . . . by providing that information.” Under the facts of this particular case, however, these are clearly countered by the first and second mitigating conditions. The nature of the Applicant’s relationship with his Iranian and French relatives is “such that it is unlikely the individual will be placed in a position of having to choose between the interests of . . . [his family] and the interests of the U.S.” Also, the Applicant “has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.”

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. Those who know and work with the Applicant think most highly of him, and recommend that he retain his security clearance. The totality of the Applicant’s conduct and circumstances, as set forth at length above, clearly warrants a favorable recommendation under the “whole person concept.” Mitigation is shown. Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged Foreign Influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Foreign Preference **FOR THE APPLICANT**

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of 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 the Applicant.

Richard A. Cefola
Administrative Judge