

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant, a dual citizen of the United States and Iran, has acted in such a way as to indicate a preference for a country other than the United States. He failed to renounce his Iranian citizenship or surrender his Iranian passport to the proper Iranian authorities, after indicating a willingness to do so. Mitigation has not been shown. This trustworthiness determination is denied.

CASENO: 06-17456.h1

DATE: 07/19/2007

DATE: July 19, 2007

In Re:)	
)	
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SSN: -----)	ADP Case No. 06-17456
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT
Candace Le'i, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant, a dual citizen of the United States and Iran, has acted in such a way as to indicate

a preference for a country other than the United States. He failed to renounce his Iranian citizenship or surrender his Iranian passport to the proper Iranian authorities, after indicating a willingness to do so. Mitigation has not been shown. This trustworthiness determination is denied.

STATEMENT OF THE CASE

On January 25, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that Applicant is eligible for assignment to a sensitive position and recommended referral to an Administrative Judge to make a determination on this issue.

In a signed and sworn statement, notarized on February 20, 2007, Applicant responded to the SOR allegations (RSOR) and requested a hearing before a DOHA Administrative Judge.

On March 26, 2007, this case was assigned to another Administrative Judge to conduct a hearing and issue a written decision, but it was reassigned to this Administrative Judge on March 28, 2007. A Notice of Hearing was issued to the parties on June 1, 2007, and the hearing was conducted in San Jose California on June 13, 2007.

At the hearing, Department Counsel offered four documentary exhibits (Exhibits 1 through 4) and one witness was called. Applicant offered no documentary exhibits at the hearing but offered his own testimony. The record was held open to allow Applicant to offer documentation concerning the case, specifically showing that he had renounced his Iranian citizenship and returned his Iranian passport, but no documents were received. The transcript (Tr) was received on July 2, 2007.

FINDINGS OF FACT

The SOR contains four allegations, 1.a., through 1.d., under Guideline C and two allegations, 2.a. and 2.b., under Guideline B. Applicant admitted SOR allegations 1.b. and 1.c., and he denied the other allegations. The admissions are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 26 year old employee of a defense contractor. He is not married. He received a Bachelor's degree in Computer Science in 2004 from a United States university.

Applicant was born Iran in 1979, and he moved to the United States in 1996. Both of his parents were born in Iran and also moved to the United States. Applicant became a United States

citizen in 2004.

Paragraph 1 (Guideline C - Foreign Preference)

The Government alleges in this paragraph that Applicant is ineligible for a trustworthiness determination because he has acted in such a way as to indicate a preference for another country over the United States.

Applicant applied for and was issued an Iranian passport on April 28, 2000. He traveled to Iran from June 2000 until September 2000, and he used his Iranian passport to enter and exit Iran. His Iranian passport expired on April 29, 2005.

When Applicant was interviewed by a Government investigator on April 11, 2006, he told the investigator that he did not want to renounce his Iranian citizenship or relinquish his Iranian passport, because he wanted to retain the opportunity to return to Iran, and because his parents owned a home in Iran.

At the hearing, Applicant testified that he was now willing to renounce his Iranian citizenship, and relinquish his Iranian passport to the proper Iranian authorities (Tr at 62). The record was held open for two weeks after the hearing to allow Applicant the opportunity to send to the proper Iranian authorities a letter indicating his renunciation of his Iranian citizenship and return of his Iranian passport. Applicant failed to submit any post hearing documents.

Paragraph 2 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

Applicant's grandmother had been a citizen and resident of Iran. She has now moved to the United States. His other grandmother also moved to the U.S. after living in Iran. Applicant now has no relatives living in Iran.

Applicant also has a boyhood friend who is a citizen and resident of Iran. Applicant's friend teaches English at an Iranian institution. He last communicated with his friend one and one half years ago. Generally, he speaks with him two times a year.

Applicant traveled to Iran in 2000, as discussed above, to visit his grandmothers and his friend.

Current Status of Iran

Since Applicant's friend is a citizen and resident of Iran, and since Applicant retained his Iranian citizenship and passport, it is relevant to examine the status and the nature of the country. Currently, Iran is considered one of the most dangerous adversaries to the interests of the United States. The U.S. has not had diplomatic relations with Iran since April 7, 1980, following the November 1979 Iranian student occupation of the American Embassy in Tehran and the hostage

taking of 52 Americans, which was supported by Ayatollah Ruhollah Khomeini, Iran's leader at the time.

The United States Government's concerns with Iran's policies include, but are not limited to the following: (1) its clandestine efforts to acquire nuclear weapons of mass destruction, (2) its

sponsorship of international terrorism, (3) its intervention into the internal affairs of Iraq, (4) its aggressive efforts to undermine the Middle East peace process, and (5) its human rights violation against its own people. As a result of these concerns, the U.S. prohibits most trade with Iran.

POLICIES

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for a trustworthiness determination.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future."

The Administrative Judge 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 which is speculative or conjectural in nature.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines C and B:

(Guideline C - Foreign Preference)

Guideline C is based on actions taken by an individual that indicates a preference for a foreign country over the United States. Applicant's unwillingness to renounce his Iranian citizenship and surrender his expired Iranian passport must be considered adversely to Applicant and it raises serious Foreign Preference (Guideline C) concerns.

Disqualifying Condition (DC) 10. (a) applies because Applicant has exercised rights and privileges of foreign citizenship, by his failure to renounce his Iranian citizenship after indicating a willingness to do so, and his retention of his Iranian passport. I find that no Mitigating Condition (MC) applies in this case under Guideline C, because while Applicant did state a willingness to renounce his Iranian citizenship, and he was given the opportunity, but he did not do so. Therefore, I have determined that his stated intention to renounce his Iranian citizenship was not made in good faith. Also while Applicant's Iranian passport is not current, as long as he has retained his Iranian citizenship, and he has not surrendered his Iranian passport, there is nothing to prevent him from renewing his Iranian passport.

(Guideline B - Foreign Influence)

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Based on the evidence of record, the Government has initially established a reason to deny Applicant a access to sensitive information because of foreign influence. Since Applicant's grandmother now resides in the United States, I do not find her to be a current concern. However, his boyhood friend is a citizen and resident of Iran, a country which, as discussed above, is undisputedly hostile to the Government of the United States, Applicant has a very heavy burden of showing that this friend does not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002).

The Iranian citizenship and residency of Applicant's close friend creates the potential for foreign influence that could result in the compromise of sensitive information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a trustworthiness determination for him. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001). This, Applicant has done.

The evidence of existence of a friend, who is a citizen and resident of Iran, comes within DC 7. (a), contact with a friend who is a citizen and resident of a foreign country that creates a heightened risk of foreign exploitation, pressure or coercion. However, I find that MC 8. (c) applies because the contact and communication between Applicant and his friend is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

After considering all of the evidence of record on the issue of Foreign Influence, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR.

FORMAL FINDINGS

Formal Findings are hereby rendered as follows:

Paragraph 1. Guideline C:	AGAINST APPLICANT
Subparagraph 1. a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Paragraph 2. Guideline B:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	For Applicant

DECISION

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

Martin H. Mogul
Administrative Judge