

DATE: October 30, 2007

In Re:)
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 -----) ISCR Case No. 06-23469
 SSN: -----)
)
 Applicant for Security Clearance)
)
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**DECISION OF ADMINISTRATIVE JUDGE
DARLENE LOKEY ANDERSON**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a dual citizen of Iran and the United States. He surrendered his expired Iranian passport to his security officer, however, he is not willing to renounce his Iranian citizenship. Clearance is denied.

STATEMENT OF THE CASE

On May 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 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.

The Applicant responded to the SOR on July 10, 2007, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 9, 2007. A notice of hearing was issued on August 16, 2007, scheduling the hearing for September 26, 2007. At the hearing the Government presented three exhibits. The Applicant presented five exhibits and testified on his own behalf. The record was left open until October 8, 2007, to allow the Applicant an opportunity to provide additional evidence. The Applicant submitted one Post-Hearing Exhibit that was admitted into evidence and the record was closed on October 9, 2007. The official transcript (Tr.) was received on October 3, 2007.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 25 years of age and has a Master's Degree in Electrical Engineering. He is employed as a Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant was born in the United States in 1982, to Iranian parents. Thus, he is a dual citizen of Iran and the United States. He grew up and resided in the United States his entire life. As a child, he was an active member of the Boys Scouts of America. He later obtained his undergraduate and graduate degrees from the University of California. His achievements qualified him for a highly selective internship with the Department of the Navy, and he was later offered a position with a Defense contractor. As a child, in 1998, the Applicant traveled to Iran to visit relatives by using his parent's Iranian passport. In 2001, he applied for and obtained his own Iranian passport. He used his own Iranian passport to travel to Iran in 2002 and 2003. His Iranian passport is currently expired and he surrendered it to his company security officer. (*See Applicant's Post-Hearing Exhibit*).

The Applicant wishes to retain his Iranian citizenship predominantly because of his grandmothers in Iran. His maternal grandmother is elderly and very close to the Applicant's mother. The Applicant wants to be able to travel to Iran with his mother if an immediate emergency were to arise. His dual citizenship with Iran gives him the ability to travel to Iran on quick notice.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

Outside of his mother and father, the Applicant has no family in the United States. All of his family reside in Iran. Specifically, the Applicant's grandmothers on both sides, an aunt, and uncles on both sides are citizens of and reside in Iran. The Applicant contacts his grandmothers in Iran about once every couple of months. He also has infrequent contact with his aunt and uncles in Iran.

The Applicant has no assets of any kind in Iran and does not believe that he stands to inherit anything from any of his relatives there in the future.

I have taken administrative notice of the current political conditions in Iran. The fact that Iran has no diplomatic relations with the United States. Iran's efforts to acquire nuclear weapons and other weapon of mass destruction, its support for and involvement in international terrorism, its support for violent opposition to the Middle East peace process, and its dismal human rights records. I have considered the fact that Iranian Government officials at all levels commit serious abuses of their power and authority. The fact that Iran has terrorists activities, and is rampant with crime and instability. The overall deteriorating security situation in Iran, the human rights abuses, and the government corruption elevates the cause for concern in the case. The United States may face no greater challenge from a single country than from Iran.

Letters of recommendation from the Applicant's supervisor and coworkers attest to the Applicant's outstanding technical and leadership support and his overall excellent performance on the job. He has their highest recommendation for a security clearance and is considered to be an invaluable asset to the organization. (See Applicant's Exhibit A).

Applicant's performance appraisals for the periods April 2006 through December 2006, and January 2007 through December 2007, reflect that he either "exceeds performance requirements" or is "outstanding" in every category. (See Applicant's Exhibit B).

The Applicant has received numerous awards and commendations from his employer for his contributions to the company. (See Applicant's Exhibit E).

E-mail correspondence dated October 8, 2007, from the Applicant's Facility Security Officer indicates that she is in possession of the Applicant's expired Iranian passport that will be kept in the Applicant's personal security file. (See Applicant's Post-Hearing Exhibit).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense.

Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

9. *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.

Condition that could raise a security concern:

10. (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member.

Conditions that could mitigate security concerns:

11. (a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;

11. (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Foreign Influence

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

None.

In addition, 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 general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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 criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The 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 predicted 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. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between 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 demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Preference, Disqualifying Condition 10(a) *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member* applies. Mitigation Conditions 11(a) *dual citizenship is based solely on parent's citizenship or birth in a foreign country*, and 11(e) *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* also apply, but are not controlling in this case. Granted, the Applicant's Iranian passport has expired and he has surrendered it to his company security officer. However, he is not willing to renounce his Iranian citizenship. Under the particular circumstances of this case, simply surrendering his expired Iranian passport without renouncing his Iranian citizenship is meaningless. His decision not to renounce his Iranian citizenship does not show a strong preference for the United States. Furthermore, as a dual national with Iran, nothing prevents the Applicant from obtaining another Iranian passport in the future. Under the circumstances of this case, I find against the Applicant under Guideline C (Foreign Preference).

Under Foreign Influence, Disqualifying Condition (7a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. None of the mitigating conditions apply.

Except for his mother and father, the Applicant has no other family in the United States. All of his relatives are citizens of and reside in Iran. The Applicant's family members in Iran include his maternal and paternal grandmothers, an aunt and several uncles. The Applicant is very close to his mother and grandmothers and is not willing to renounce his Iranian citizenship. Although there is no evidence that any of his family members in Iran are associated in any way with the Iranian government, there is strong evidence of affection with his immediate family. Moreover, the current political situation in Iran elevates the cause for concern in this case. The possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guidelines C and B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines C and B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant

1.b.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

Subparas. 2.b.: Against the Applicant

Subparas. 2.c.: Against the Applicant

Subparas. 2.d.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge