

DATE: January 27, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-09892

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

#### **FOR APPLICANT**

Aria Shariati, Esq.

### **SYNOPSIS**

Applicant is a U.S. citizen who renewed her Iranian passport in 2003 so that her husband could take their two children to Iran to visit his mother. She still possesses the Iranian passport. Applicant also has ties of affection or obligation to her father, maternal aunt, and mother-in-law in Iran as to place her in a position of vulnerability to be exploited. 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 30 July 2003, 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) and Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing on 27 August 2003 and elected to have a hearing before an administrative judge. The case was originally assigned to another administrative judge, but was transferred to me on 26 November 2003. On 16 December 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on 2 January 2003.

At the hearing, the Government called an agent from the Defense Security Service to testify in an effort to admit the report of investigation he prepared on Applicant. Applicant objected on the ground that she had asked for copies of all evidence to be used against her in the hearing and the report of investigation had not been provided. Based on the Government's failure to provide the report of investigation to Applicant, I refused to admit it.

After Applicant testified, Department Counsel moved to amend the SOR by adding two allegations under Guideline C:

1.b. In August 2003 you renewed your Iranian passport and continue to possess it.

1.c. Your children were registered with the Iranian government in about 2003.

Applicant objected to adding ¶ 1.c., but concurred in adding ¶ 1.b. to the SOR. I permitted the addition of ¶ 1.b. but denied the addition of ¶ 1.c.

### FINDINGS OF FACT

Applicant was born in 1964 to Iranian parents in a city in northern Iran. When she was about three years old, her parents separated and her father married another woman. In 1977, her father took her two older sisters to the U.S. for schooling. In 1978, he took Applicant her mother, another sister, and her maternal step-brother to the U.S. Tr. 55-56. Applicant, her mother, and sisters have lived in the U.S. ever since. They are now all U.S. citizens.

Applicant's father is a wealthy attorney who lives in northern Iran. He returned to the U.S. several times the first year Applicant was in the U.S. Tr.68-70. Thereafter the trips tapered off. He also provided money for the family until the revolution in Iran in 1979. However, he did pay for most of the undergraduate expenses for Applicant and her sisters. Tr. 80, 84. The last time Applicant's father visited her in the U.S. was in 1984. Tr. 54, 85. She talks to her father by phone approximately once a year. Although he could have if he had wanted to, Applicant's father did not attend Applicant's wedding in the U.S. and appears not to have acknowledged the marriage by way of a gift.

Applicant graduated from high school and college in the U.S. Applicant returned to Iran on two occasions. In 1988, she went to visit her friends and family. She stayed with a maternal aunt, but visited her father. In 1993, Applicant married a man who was born in Iran but was living in the U.S. He is now a U.S. citizen. In 1994, Applicant visited Iran and stayed with her aunt and mother-in-law. On both of her trips to Iran, Applicant traveled on her Iranian passport. Although she saw her father on these trips, she spent most of her time with her aunt and mother-in-law.

In 1995, Applicant became a U.S. citizen and acquired a U.S. passport. Her Iranian passport expired in 1996. Applicant was advised by the DSS agent who interviewed her in December 2001 that she needed to "surrender" her Iranian passport to the Iranian Government. She called the Iranian Interests Section and was told there was no procedure for turning in her passport. She notified her security office and they told her to send a copy of the passport to them and write out a statement about her use of the passport, which she did. Tr. 100-101. Applicant has traveled fairly widely on her U.S. passport. She never traveled on an Iranian passport after becoming a U.S. citizen.

Applicant has two daughters, now age 5 and 7. Although they are his first grandchildren, Applicant's father neither called nor acknowledged their birth. In the summer of 2003, Applicant's husband took their two daughters to visit his mother in Iran. As both parents had been born in Iran and been issued Iranian passports in the past, the Government of Iran refused to allow the children to enter Iran unless the parents renewed their Iranian passports and registered the children. Applicant and her husband complied, and her husband and the children visited Iran. Applicant did not travel to Iran and has not used her Iranian passport to travel, although she still possesses it. During the trip to Iran, Applicant's father gave each of Applicant's daughters a small piece of gold—a traditional gift.

Applicant's husband's mother is a citizen of Iran and still resides there. She visited the U.S. for Applicant's wedding, in 1996, after the birth of Applicant's first child, and again for a couple of months in March 2001. Applicant's husband telephones his mother often, at least every week or two. Tr. 119, 123. He also helps his mother financially.

Applicant's mother has a brother and sister who still reside in Iran. She has traveled back to Iran on several occasions, the last being approximately five years ago. Applicant's mother is a U.S. citizen as are all of Applicant's sisters. If her father came to the U.S. to visit, he could stay with Applicant. Tr. 121. If he were to die, Applicant would go to Iran to attend the funeral as a matter of family obligation. Tr. 102.

### POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to

United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

### **Guideline C-Foreign Preference**

In the SOR, DOHA alleged Applicant is a dual citizen of the U.S. and Iran. ¶ 1.a. In the amendment to the SOR, ¶ 1.b., the Government alleged Applicant renewed her Iranian passport and continued to possess it. When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., then she may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1.

The Government established by substantial evidence and Applicant's admissions that Applicant exercised dual U.S.-Iranian citizenship (DC E2.A3.1.2.1) and possessed a foreign passport (DC E2.A3.1.2.2.). U.S. citizens who were born in Iran and the children of such persons are considered Iranian nationals by the Government of Iran. Ex. I at 2. Applicant has recognized that she is a dual citizen. Ex. 1 at 1. By renewing her foreign passport for the purposes of perfecting her children's travel to Iran, Applicant exercised the rights and privileges of foreign citizenship such as to raise a security concern. The possession of a foreign passport disqualifies Applicant from obtaining a security clearance absent official approval by an appropriate agency of the U.S. Government. Memo. from Arthur L. Money, Asst SecDef, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline* (Aug. 16, 2000). There is no evidence Applicant received official approval for the possession of the passport. The fact that Iranian authorities required Applicant to renew her passport in order for her children to travel to Iran is not extenuating or mitigating under Guideline C. *See* ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*47 (App. Bd. Feb. 8, 2001) ("use of a foreign passport for personal convenience is not extenuating or mitigating under Guideline C"). I find against Applicant.

### **Guideline B-Foreign Influence**

In the SOR, DOHA alleged Applicant's father (¶ 2.a.) and her stepmother, mother-in-law, half-brother, and three half-sisters (¶ 2.c.) are citizens and residents of Iran; and her mother is a dual citizen of the U.S. and Iran and resides in the U.S. ¶ 2.b. A security risk may exist when an applicant's immediate family, and other persons to whom she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. Directive ¶ E2.A2.1.1.

The Government established by substantial evidence and Applicant's admissions that a member of her immediate family (her father) is a resident and citizen of Iran. In addition, Applicant has close ties of affection or obligation to citizens and resident of Iran (DC E2.A2.1.2.1-her maternal aunt and her mother-in-law. *See* ISCR Case No. 01-02452 at 8 (App. Bd. Nov. 21, 2002) (holding an administrative judge "reasonably could consider the significance of Applicant's spouse's ties to [a foreign country] and the possible effect they may have on Applicant's conduct under Guideline B"). Applicant's mother is also a dual citizen by virtue of her birth in Iran. She, herself, does not present a risk of foreign influence on Applicant. I find for Applicant on ¶ 2.b. While the evidence supports a conclusion Applicant, her mother, her husband, and her sisters are loyal U.S. citizens, Applicant's ties to residents and citizens of Iran place her in a *position of vulnerability* to coercion or blackmail. *See* ISCR Case No. 00628 at 5 (App. Bd. Feb. 24, 2003). Applicant has no such ties to her stepmother or stepsisters. Under all the circumstances, I find against Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: Against Applicant

### **DECISION**

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

**James A. Young**

**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.