

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant's active use of his foreign passport to travel to Iran after he became a U.S. citizen raise security concerns over foreign preference. He initially declared that he would not relinquish his foreign citizenship or his foreign passport in order to comply with Department of Defense (DoD) policy. Later he stated he had an intent to do so, but provided no evidence that he had relinquished his foreign passport as required. He mitigated the allegations of foreign influence. Although his family members are dual citizens, there is no evidence that they have ties to the government, or could be exploited by a foreign power in a way that would force him to choose between his ties to them and to the United States (U.S.). Clearance is denied.

CASENO: 02-10601.h1

DATE: 09/01/2004

DATE: September 1, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10601

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire,

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's active use of his foreign passport to travel to Iran after he became a U.S. citizen raise security concerns over foreign preference. He initially declared that he would not relinquish his foreign citizenship or his foreign passport in order to comply with Department of Defense (DoD) policy. Later he stated he had an intent to do so, but provided no evidence that he had relinquished his foreign passport as required. He mitigated the allegations of foreign influence. Although his family members are dual citizens, there is no evidence that they have ties to the government, or could be exploited by a foreign power in a way that would force him to choose between his ties to them and to the United States (U.S.). Clearance is denied.

STATEMENT OF THE CASE

When the Government could not reach a preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, ^(U) the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on September 3, 2003. The SOR detailed security concerns in paragraph 1 over foreign preference (Guideline C) and in paragraph 2 over foreign influence (Guideline B). Applicant received the SOR and replied to the SOR allegations in an Answer of October 17, 2003; he admitted all allegations and requested a decision without a hearing.

The case was assigned to Department Counsel who completed a File of Relevant Material (FORM) which contained ten exhibits. Exhibit 9 was a U.S. Department of State Consular Information Sheet that I considered submitted for Official Notice. Exhibit 10 was the August 16, 2000, DoD policy memorandum on Guideline C. The FORM was forwarded to Applicant on December 8, 2003. Applicant received it on December 15, 2003, and responded on January 9, 2004 with his exhibit A. On February 3, 2004, Department Counsel indicated he had no objection to this submission. On February 20, 2004, the case was assigned to me.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 52 years old, went to work for a defense contractor in State #1 in March 1995. He also is a visiting lecturer at a state university. In April 2000 he completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) to seek a security clearance. (Answer; Exhibit 4)

He attended college in Iran. (Exhibit 5) In 1984 he received a Ph.D. degree from a U.S. university in State #1. (Answer; Exhibits 4, 5)

He married a citizen of Iran in 1983 in Iran. They have two children born in the U.S. in 1987 and 1991 who are dual U.S. and Iranian citizens. (Exhibit 4)

Foreign Preference

Born in Iran in 1952, Applicant came to the U.S. in August 1974 to go to graduate school in State #2. He then moved to State #1 where he completed his Ph.D. He became a naturalized U.S. citizen in April 1999 and obtained a U.S. passport in April 1999. (Exhibits 4, 5, 7)

Applicant maintains his dual citizenship and travels on his Iranian passport to visit his elderly mother and siblings who live in Iran. For example in August 2001 he went to Iran on his Iranian passport and re-entered the U.S. on his U.S. passport. He insisted in October 2001 he was unable to surrender his Iranian passport because it is his only link to his family remaining in Iran. He would not give up his Iranian passport until relations between Iran and the U.S. improve. With his Iranian passport he can enter without a visa. (Answer; Exhibits 5, 6, 7, 8) He has no plans to return to Iran to live. (Answer)

Applicant advised that Iran does not "honor" the foreign citizenship of the Iranian nationals and as a practice does not renounce Iranian citizenship based on the assumption of foreign citizenship. (Answer) In May 2003 and again in January 2004 Applicant stated he was willing "not to renew" his Iranian passport, but he provided no evidence that he took any steps to implement his intent. Also, he stated he would be willing to renounce his foreign citizenship, but

provided no evidence of steps to implement this intent. (Exhibit A)

All of his financial interests are in the U.S. Applicant provides no financial assistance to his relatives in Iran nor to any foreign organization or educational institution. He never served in the military in Iran and has no financial interests there, nor does he receive any benefits from Iran. He has never been approached by any foreign intelligence operatives and would report any such approaches to his security officer or to the FBI. (Answer; Exhibits 5, 6; Exhibit A)

Foreign Influence

Applicant's mother has visited the U.S. twice, but is too ill to move here, even though she is eligible. (Answer) Nothing in her background would make her vulnerable to coercion, pressure or influence.

His father-in-law is a citizen of Iran but has been granted residency in the U.S. (Answer) Nothing in his background would make him vulnerable to coercion, pressure or influence.

Applicant has three siblings who are residents of and citizens of Iran. None of them work for the government or are agents of a foreign power. His brother is a radiologist in private practice. His elder sister is retired; she and her husband are in the process of obtaining U.S. residency. His younger sister is self-employed. His family in Iran has no affiliation with the Government of Iran. (Answer; Exhibit A) Nothing in their background would make them vulnerable to coercion, pressure or influence.

Applicant's spouse is a dual citizen of the U.S. and Iran; she has lived in the U.S. since 1984 and received her BA and MA in the U.S.; she is a teacher in a U.S. school system. She maintains her passport to visit her parents in Iran. (Answer; Exhibit A) Nothing in her background would make her vulnerable to coercion, pressure or influence.

Their two children are dual citizens of the U.S. and Iran; both were born in the U.S. and are on their mother's passport. (Answer; Exhibit A) Nothing in their background would make them vulnerable to coercion, pressure or influence.

U.S. Department of State Guidance

The U.S. Department of State Consular Information Guidance on Iran notes the current government emphasizes vehement anti-U.S. stances; the U.S. prohibits most trade with Iran. U.S. citizens who go to Iran should exercise caution as authorities sometimes confiscate the U.S. passports of U.S.-Iranian dual nationals. (Exhibit 9)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed the following relevant Adjudication Guidelines:

Guideline C - Foreign Preference [\(2\)](#)

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.

Conditions that could raise a security concern and may be disqualifying include:

- (1) the exercise of dual citizenship;
- (2) possession and/or use of a foreign passport [\(3\)](#);

Conditions that could mitigate security concerns include:

None.

Guideline B - Foreign Influence

The concern: 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 obligation are: (1) not citizens of the United States or (2) 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 interests 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 include:

(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

Conditions that could mitigate security concerns include:

(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;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order

to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Guideline C - Foreign Preference

Applicant's active exercise of his dual citizenship by using his Iranian passport for travel to Iran after becoming a naturalized U.S. citizen raises a security concern under Guideline C, Foreign Preference as he may be prone to provide information or make decisions that are harmful to the interests of the United States. Conditions that could raise a security concern and may be disqualifying include: (1) the exercise of dual citizenship and (2) possession and/or use of a foreign passport. In addition, DoD policy clarification of August 16, 2000 explains that "possession and/or use of a foreign passport" may be a disqualifying⁽⁴⁾ condition. To mitigate an Applicant must surrender his foreign passport or obtain official approval for its use. While dual citizenship is not prohibited *per se* by policies of the United States, any conduct indicating possible foreign preference does raise a security concern where such action would increase the risk of an individual being influenced by the needs, desires, or aims of a foreign nation. Applicant's possible foreign preference arise from his active exercise of dual citizenship even after he became a U.S. citizen. Applicant possessed a foreign passport and used it on trips to Iran to visit his family even after his U.S. passport was issued to him. Applicant did so for convenience rather than to attempt to get an Iranian visa on his U.S. passport.

Applicant provided no evidence that he as relinquished his foreign passport. As long as he retains possession of this passport, he has not complied with Department of Defense (DoD) policy. Further, while he states he is willing to relinquish his citizenship in Iran, he provided no evidence to establish that his intent is credible. Clearly, his motivation to continue to visit his elderly mother is strong. While his reservations about the difficulties of traveling to Iran on his U.S. passport may be well founded and even confirmed by State Department guidance, under DoD policy that is not a basis to justify or excuse use of a foreign passport while a U.S. citizen.

While Applicant maintains that he would not compromise classified U.S. information, that statement alone does not establish sufficient the preference for the U.S. under DoD security policy. After reviewing all of the evidence in the record and considering all of the security policies, including the August 16, 2000, policy clarification memorandum, I conclude he has not met the DoD mitigation conditions to indicate his clear preference for the United States. Acts indicative of foreign preference warrant careful scrutiny. Hence, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.b against Applicant.

Guideline B - Foreign Influence

Applicant mitigated the Government's security concerns over Applicant's possible foreign influence raised by his close ties of affection to citizens of a foreign country: Applicant's relatives have no current ties to their foreign government; nor is there any substantial likelihood that they would exercise foreign influence over Applicant. While his mother and siblings reside in Iran, one sister is in the process of becoming a U.S. citizen. His wife and children, while dual citizens, live in the U.S. None of his relatives have any ties to the government of Iran. Applicant is not vulnerable to duress merely because of these family ties. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Since Iran and the U.S. have no established diplomatic relations, acts indicative of foreign influence warrant careful scrutiny.

After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, here I conclude these family ties do not raise such concerns. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.e. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: 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 security clearance for the Applicant. Clearance is denied.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Clarification of Department of Defense Policy on Foreign Preference: The Department of Defense issued a policy memorandum on August 16, 2000, clarifying the policy on Foreign Preference, Guideline C:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United State Government. Modification of the Guideline is not required.

3. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport"
4. The policy contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country.