

DATE: August 23, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-0486

## **DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn A. Trowbridge, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **OVERVIEW**

Applicant failed to mitigate security concerns over foreign preference prompted by his dual citizenship: after he became a naturalized US citizen in August 1985, he possessed a foreign passport and used this foreign passport for trips to Iran in 1994 and 1998. He has not relinquished the foreign passport which expires in October 2001 and has not acted to document his exclusive preference for the US. (The fact that the government of Iran does not allow people born in Iran to travel to Iran with a US passport does not mitigate the use of a foreign passport under current US security policy.) While his parents and siblings are citizens of this foreign country and reside there, the ties are so casual and infrequent that he would not be subject to foreign influence. Clearance is denied.

### **STATEMENT OF THE CASE**

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, <sup>(1)</sup> so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on September 11, 2000. 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 these SOR allegations in an Answer of October 20, 2000, and admitted allegations 1.a. through 1.c. with explanations and 2.a. He requested a decision on the record as he did not wish to have a hearing.

The case was assigned to Department Counsel; on November 17, 2000, she prepared the File of Relevant Material (FORM) for the Applicant's review. Department Counsel advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on November 22, 2000, and again notified the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on December 7, 2000. However, he did not submit any response before the deadline of January 7, 2001. On July 10, 2001, the case was assigned to me.

## PROCEDURAL ISSUE

On July 25, 2001, Department Counsel sent me and Applicant a letter noting that she had inadvertently omitted from the file, the DOHA letter of September 11, 2000, which transmitted the SOR and noted as an attachment 3, The Department of Defense ASD(C3I) policy memorandum on August 16, 2000, which clarified the policy on Foreign Preference, Guideline C. He received this attachment on September 18, 2000. (Item 6)

### **Clarification of Department of Defense Policy on Foreign Preference**

The Department of Defense policy memorandum of August 16, 2000, clarified the policy on Foreign Preference, Guideline C and stated, in part:

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.

### 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, 40 years old, is a professional with a United States (US) defense contractor (Company #1) in State #1. He has worked there since December 1994. Prior to that he worked for other companies. In July 1999 he completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) to seek a Secret security clearance. (Item 4) Applicant had been granted a Secret level security clearance in 1988. (Items 4, 5)

Applicant received a masters degree in January 1983 from a university in State #3. Applicant married a US citizen in 1981 in State #3. (Item 4)

### **Foreign Preference**

Born in Iran in 1959, Applicant immigrated to the US in 1976 to attend college in State #3 on a student visa with his Iranian passport which he still holds. After completing his master's degree, he worked for Company #5 from 1983-86 and for Company #4 from 1986 to 1987. He worked for Company #3 from 1987 to 1989 and held a DoD secret clearance. From 1989 to 1994 he worked for Company #2 in State #2 and has worked for Company #1 since 1994. Thus, he has lived, studied, and worked continuously in the US since November 1976. (Items 4, 5)

Applicant became a naturalized US citizen in August 1985, and is a dual<sup>(2)</sup> citizen of the US and Iran. While his US passport was issued to him initially in 1986 and renewed in June 1998, he used an Iranian passport to travel to Iran under that foreign passport re-issued in October 1996 which does not expire until October 2001. Applicant visited Iran for a one month period of time in 1977, 1994 and 1998. This travel was on his foreign passport as the government of Iran does not allow people born in Iran to travel to Iran with a US passport. For him to enter Iran on his US passport he would have to give up his Iranian citizenship and serve two years in the Iranian Army. He has never served in the Iranian military and has not registered with the Iranian miliary. He would not serve in the Iranian military or bear arms on behalf of the Iranian Government. He has no intention of exercising or accepting any rights, privileges or benefits offered by Iran to its citizens. He has never registered to obtain benefits. His only reason for travel to Iran is to visit his family as he has no financial interests there. (Items 4, 5)

Applicant has never been employed as an agent or official representative of a foreign government and does not seek or hold a political office in a foreign state. He has not used his position of trust and responsibility to influence decisions to serve the interests of another government in preference to those of the US. (Items 4, 5)

### **Foreign Influence**

Applicant's parents and siblings live in Iran, but do not hold any type of government position there. His father is a retired poultry farmer and store owner. Applicant does not receive any type of financial support from Iran or from any family members living in Iran; he does not send any financial support to family members in Iran. He credibly maintains he would not be subject to blackmail, pressure or coercion by a foreign government because of his family living in Iran. He has never had any suspicious approaches or contacts; and if any were to recur, he would immediately report them appropriately. Applicant visited Iran intermittently in 1977, 1994 and 1998; and his family has visited him in the US. (Items 4, 5)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are 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. But 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 relevant Adjudication Guidelines as set forth below:

#### **Guideline C - Foreign Preference<sup>(3)</sup>**

**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<sup>(4)</sup>;

**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;

(3) contact and correspondence with foreign citizens are casual and infrequent.

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**

The Government raises a security concern under Guideline C, Foreign Preference when an individual acts in such a way as to indicate a preference for a foreign country over the United States: the individual may then be prone to provide information or make decisions that are harmful to the interests of the US. 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. Security concerns over Applicant's possible foreign preference arise from his exercise of dual citizenship: he has held a foreign passport issued after he became a naturalized citizen of the US in August 1985 and after his US passport was issued to him in 1986.

While dual citizenship is not prohibited *per se* (and in that sense is sanctioned 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. Not only did he possess a foreign passport, he chose to use it for two trips in 1994 and 1998 after he was a naturalized US citizen and was issued a US passport.

The clarification in DoD security policy on August 16, 2000, focused on foreign passports: The Guideline specifically provided that "possession and/or use of a foreign passport" may be a disqualifying<sup>(5)</sup> condition. But the policy guidance furnished a means for individuals to mitigate this concern: the only clear requirement is that an applicant must surrender the foreign passport or obtain official approval for its use from the appropriate agency of the United States Government. Applicant did not do so. Even after he was advised of these security requirements with his SOR and with the FORM, Applicant's attitude and conduct did not change: Applicant has not surrendered his foreign passport to comply with these US security requirements.

Significantly, neither did he take the additional step of renouncing his foreign citizenship even though he claimed to consider himself only a US citizen. Thus, Applicant has not complied with the DoD August 2000 policy clarification requirements, and he has not mitigated<sup>(6)</sup> those foreign preference concern. While the policy does not mandate renouncing foreign citizenship in order to gain access to classified information,<sup>(7)</sup> Applicant has not even indicated his conditional willingness to renounce foreign citizenship or surrender his passport. While he has lived in the US for a long period of time since immigrating here, he has roots and family in Iran and has used his Iranian passport to visit there after becoming a naturalized US citizen and being granted a US passport. Looking at the totality of his conduct and circumstances, I note that he has not clearly demonstrated that his principal preference has been to the US and would continue to be to the US. Further, he provided no references that he has handled his security requirements professionally in the past and is trustworthy for a security clearance.

Acts indicative of foreign preference warrant careful scrutiny. Security concerns over his dual citizenship remain as there is no substantial evidence of any affirmative actions to surrender his foreign passport as required to indicate his clear preference for the United States. His repeated use of his Iranian passport to visit Iran in 1994 and 1998 undercuts his statement that he considers himself only a US citizen. He has taken no steps to indicate that exclusive preference. Applicant does not claim that his activities were sanctioned by the US. The fact that the government of Iran does not allow people born in Iran to travel to Iran with a US passport is not a basis to mitigate the use of a foreign passport under current US security policy as the DOHA Appeal Board has noted that current policy rejects the argument of legal necessity.<sup>(8)</sup> When pressed to make a choice, an individual may chose his birthplace over his adopted country of economic opportunity. As security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances, any doubt must be resolved against Applicant. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988).

Thus, in this case, I conclude after reviewing all of the evidence in the record and considering all of the policies and the August 16, 2000, policy clarification memorandum that there does remain concern under current policy that Applicant could act in preference for that foreign country over the United States. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines as well as the August 2000 DoD policy clarification, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.c. against Applicant.

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

The Government expressed security concerns over Applicant's possible foreign influence raised by his close ties of affection to citizens of a foreign country: his parents and his siblings are citizens of a foreign country. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family. . . 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. While the foreign influence provisions of the Adjudicative Guidelines are neutral as to the nature of the subject country, in this case, the country of Applicant's heritage has a history of hostage taking and the potential for exerting pressure or influence against the US.

While the Government documented no specific evidentiary basis for any specific security concern other than his 1994 and 1998 visits to his family, the burden is on Applicant to establish there is no basis for a security concern. He asserts that the family has no ties to the government and that his father is a retired poultry farmer and store owner. Applicant does not receive any type of financial support from Iran or from any family members living in Iran; nor does he send any financial support to family members in Iran. He credibly maintains he would not be subject to blackmail, pressure or coercion by a foreign government because of his family living in Iran. He has never had any suspicious approaches or contacts; and if any were to recur, he would immediately report them appropriately.

Thus, these security concerns are mitigated by the fact that Applicant's relatives have no ties to their foreign government, and there is little likelihood that they would exercise foreign influence over Applicant merely because of these family ties. Applicant does not visit them frequently; he has not been there in three years. Thus, I conclude that Applicant's ties are casual and infrequent. Since he has been a US citizen for sixteen years, I think it improbable that his family would now create a situation that could result in the compromise of classified information or subject Applicant to duress. 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.

While 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 subparagraph 2.a. 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

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: 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.

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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. In his Answer Applicant states he considers himself a U.S. citizen only, but he offered no proof of having renounced his Iranian citizenship or returned his Iranian passport. (Answer)
3. See also the DoD August 16, 2000, Policy Clarification Memorandum, quoted above.
4. 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 . . . ."
5. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country.
6. **Conditions that could mitigate security concerns include:**
  1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country;
  2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;
  3. Activity is sanctioned by the United States;
  4. Individual has expressed a willingness to renounce dual citizenship.
7. The Appeal Board has ruled a mitigating condition is not a mandatory requirement. They reversed an Administrative Judge who denied a security clearance when an individual had not successfully completed a drug treatment and rehabilitation program because successful completion of a drug abuse program, a mitigating condition, could not be required. See ISCR Case No. 98-0066 (August 28, 1998). On the other hand the Appeal Board reversed an

Administrative Judge who had granted a security clearance under MC 4 when the applicant's expressed willingness to renounce had not been transformed into action as an "unqualified or unconditional willingness to renounce foreign citizenship. . .should be given more weight than a qualified or conditional willingness to do so." (ISCR Case No. 98-0252 (September 15, 1999) at 5. More recently the Board observed that "Department Counsel's argument goes too far to the extent it seeks to make Foreign Preference Mitigating Condition 4 a prerequisite for a favorable security clearance decision. The Board has held that the presence or absence of Adjudicative Guidelines Disqualifying or Mitigating Conditions is not solely dispositive of a case. *See, e.g.* ISCR Case No 99-0109 (March 1, 2000) at page 5." Appeal Board, ISCR Case No. 99-0452 (March 21,2000) at 7.

8. See Appeal Board Decision in ISCR 99-0295, October 20, 2000 at page 6.