

DATE: February 27, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-01770

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant seeks to continue his security clearance. Applicant has mitigated the foreign preference and foreign influence security concerns. Clearance is granted.

STATEMENT OF THE CASE

On June 20, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personnel security Guideline C (Foreign Preference) and Guideline B (Foreign Influence) 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 Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed statement, dated September 5, 2003, and sworn to on September 10, 2003, Applicant responded to the SOR allegations. He requested a hearing. This case was assigned to me on November 17, 2003, after being reassigned from another Administrative Judge due to caseload considerations.

A Notice of Hearing was issued on November 17, 2003, setting the hearing for December 4, 2003. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented three exhibits which were admitted into evidence. Applicant appeared and testified, and offered two exhibits, all of which were admitted into evidence. Applicant also had three witnesses testify on his behalf. I received the transcript (Tr.) of the hearing on December 30, 2003.

FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.a., 2.a., 2.c., and 2.d. of the SOR. Those admissions are incorporated herein as findings of fact. Applicant denied the allegations in subparagraphs 1.b. and 2.b. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 49 years old. He is employed as an electrical engineer with a defense contractor. He is married and has a fourteen year old daughter. (Tr. 22)

Applicant came to the United States as a teenager 30 years ago to attend college. He came from a wealthy landowning family in Iran. Applicant graduated magna cum laude and has worked in the aerospace industry for over 20 years. Applicant has not been back to Iran since 1978. Applicant became a U.S. citizen in 1997. He has a U.S. passport. (Tr. 13, 16, 32)

Applicant has a younger sister, who became a United States citizen in September 2002, and who lives in the United States. She travels to Iran every two years to visit her older sister. (Tr. 13, 26, 29)

Applicant's parents live in the United States and will apply to become U.S. citizens in 2004 when they are eligible. They are permanent residents of the United States. His parents travel to Iran every two years to visit relatives. (Tr. 14, 26)

Applicant has an older sister who lives in Iran with her family. Applicant wants her to emigrate to the United States. Applicant speaks on the phone once or twice a month with his sister, talking about everyday items. Applicant has sent his two nephews gifts of clothing. (Tr. 15, 23)

Applicant has aunts and uncles living in Iran, whom he has not had contact with for 25 years. He does not speak with them. (Tr. 15)

Applicant obtained an Iranian passport, while having a U.S. passport, in 2001 because he intended to visit Iran and see his sister and her family. He obtained that passport because he understood it would be easier to travel within Iran being a former Iranian with an Iranian passport than a U.S. passport. The trip never occurred, because Applicant was concerned about the unstable Iranian government. Applicant then learned he would have a security clearance problem if he kept the passport. He sought to return the passport and renounce any Iranian citizenship he might have after learning that fact. The Iranian authorities refused to accept his renunciation and passport. Applicant understood the Iranian authorities would return the passport to him. (Tr. 14, 16, 17, 19, 27)

Applicant surrendered the Iranian passport to his employer's security office, which locked in a security vault, and later shredded the Iranian passport. The company's security office submitted a written certification that on December 4, 2003, they shredded Applicant's Iranian passport in a government-approved shredder. (Exhibits A and C; Tr. 14)

Applicant sent a letter to the Iranian interests section of the Pakistani Embassy in Washington, D.C., dated July 9, 2003, renouncing his Iranian citizenship and declaring he surrendered his Iranian passport to his employer. (Exhibit B; Tr. 19, 20)

Applicant does not own any land in Iran, and will not inherit any property from there. All his family' land was confiscated during the Iranian revolution in 1979. (Tr. 26, 31)

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* Section 3.1(b)

(Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a prima facie case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

GUIDELINE C: Foreign Preference:

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. Directive ¶ E2.A3 .1.1.

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

The exercise of dual citizenship. Directive ¶ E2.A3.1.2.1.

Possession and/or use of a foreign passport. Directive ¶ E2.A3.1.2.2.

E2.A3.1.3. Conditions that could mitigate security concerns include:

Dual citizenship is based solely on parents' citizenship or birth in a foreign country. Directive ¶ E2.A3.1.3.1.

Individual has expressed a willingness to renounce dual citizenship.

Directive ¶ E2.A3.1.3.4.

Applicable also is the Memorandum of August 16, 2000, entitled "Guidance of DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudicative Guidelines", by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), commonly known as the "Money Memo". This memorandum guidance states that

possession and/or use of a foreign passport may be a disqualifying condition. . . The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raised 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 until the applicant surrenders the

foreign passport or obtains official approval for its use from the appropriate agency of the

United States Government.

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 not citizens of the United States or 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.

Directive, ¶ E2.A2.1.1.

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

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. Directive, ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

A determination that the immediate family member(s) 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. Directive, ¶ E2.A2.1.3.1.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Guideline C - Foreign Preference: The Government met its burden and established the facts by substantial evidence. Individuals who act in ways that indicate preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States. (Directive ¶ E2.A3.1.1.) Clearly, Applicant showed a foreign preference because he voluntarily applied for an Iranian passport. Applicant cannot have a foreign preference and a security clearance in the United States. Therefore, Disqualifying Conditions (DC) 1 (dual citizenship) and 2 (possession and use of a foreign passport) apply.

Applicant must now meet his burden to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3

(App. Bd. Dec. 19, 2002). 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. Here, Applicant met his burden. By surrendering his passport, Applicant has overcome the requirements of the ASDC3I memorandum which reiterates that the failure to surrender the foreign passport is a disqualifying condition. He surrendered the passport to the only entity which would accept it, and then it was destroyed. Applicant never used the passport, also. He also has expressed a willingness to renounce any vestiges of his Iranian citizenship, and did so by a letter addressed to the proper authorities.

Mitigating Condition (MC) 1 (Dual citizenship is based solely on the parent's citizenship or birth in a foreign country) applies. In addition, his willingness to renounce dual citizenship makes MC 4 applicable. Therefore, I find for Applicant on this guideline.

Guideline B - Foreign Influence: DC 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) applies. Applicant has a sister in Iran who is older than he is. His parents are Iranian citizens resident in the United States.

I find Mitigating Condition (MC) 1 (the immediate family members are not agents of a foreign power or in a position to be exploited) is applicable. Applicant showed that none of Applicant's family members are agents of any government. Applicant showed he was not vulnerable to influence by coercive means because of his sister living in Iran. Applicant has his life and livelihood invested in the United States, and realizes what he loses if he betrays the trust placed in him by a security clearance. His words were that it would be a "lose/lose" situation. His contacts with his sister are routine, but only by telephone. He has not seen her for several years. The aunts and uncles are not a factor because they are so far removed from Applicant's familial relationships due to the distance and passage of time. His parents are going to become U.S. citizens, and do not live in Iran. Furthermore, Applicant testified that his family has already lost its wealth due the revolution in 1979 in Iran, so there must be little else to lose and no influence by that government on Applicant because they have already done their worst to him and his family. Also, Applicant's contacts with his siblings are not casual or infrequent because of the family relationship. In addition, Applicant said he would report any inappropriate contacts by persons seeking classified information. These foreign contacts are considered in light of all of the evidence on the record. I find for Applicant on this Guideline.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For 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

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Philip S. Howe
Administrative Judge