

DATE: December 19, 2001

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In Re:

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SSN:-----

Applicant for Security Clearance

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ISCR Case No. 01-04062

## **DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Martin H. Mogul, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **STATEMENT OF THE CASE**

On July 12, 2001, 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 in writing on July 31, 2001 in which she elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on September 4, 2001. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on September 12, 2001, and she submitted a reply dated October 9, 2001.

The case was assigned to the undersigned for resolution on October 19, 2001.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." (Hereafter referred to as the oney memorandum).

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, and the Government's documents. The Applicant is 30 years of age, married, and has a Master of Science degree in Computer Science. She is employed by a defense contractor. She seeks a security clearance in connection with her 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 she has acted in such a way as to show a preference for another country over the United States.

The Applicant was born in Iran. She currently holds a passport that was issued by the Iranian Government in May 1997, which will not expire until May 2002. In May 1999, the Applicant became a naturalized citizen of the United States. (Government Exhibit 4). The Applicant states that when she was sworn in as an American citizen, she attempted to turn in her Iranian passport with her green card, but only her green card was taken. After receiving the SOR, she tried to determine if she could turn in her passport to the Iranian interest section. She was told that it was not possible. In August 1999, when she completed her security clearance application, she did not possess a United States passport. The Applicant claims that she has recently obtained an American passport. (See, Applicant's Reply to Form).

The Applicant states that she is willing to turn in her Iranian passport since she only uses it for travel to Iran. (See, Applicant's Reply to Form).

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

The Applicant's mother and sister are citizens of Iran, but reside in the United States. The Applicant's mother travels regularly to Iran to care for the Applicant's grandmother and, as the result of her frequent travel, she is not eligible for United States Citizenship at this time. The Applicant's sister is eligible for citizenship, but is not a citizen. The Applicant's grandmother, aunt, and cousins are citizens of Iran and all reside in Iran. (Government Exhibit 3).

The Applicant's husband was born in Pakistan. The Applicant claims that he is a naturalized citizen of the United States, but provides no specifics. The Applicant states that her husband's family are Christian Pakistanis who immigrated to the United States and Canada over twenty years ago. She further states that they have become United States and Canadian citizens.

The Applicant's mother-in-law was born in Pakistan, and is a citizen of the United States. The Applicant's father-in-law is a citizen of Pakistan and resides in Pakistan. The Applicant states that her mother-in-law and father-in-law divorced in 1982, and she and her husband have no contact with her father-in-law.

The Applicant visits her family in Iran when she travels there. The Applicant traveled to Iran in 1993, and again in 1998, each time using her Iranian passport. (See, Government Exhibit 4). There is also evidence that she traveled to Iran using her Iranian passport after becoming an American citizen in 1999. (See, Applicant's Reply to FORM dated October 5, 2001).

## **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

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:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Condition that could mitigate security concerns:

4. Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

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:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.

Condition 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 her 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 written record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on her suitability for access to classified information.

The Applicant is a dual citizen of Iran and the United States. Although she lives and works in the United States, she has maintained her Iranian passport for the convenience of traveling to Iran to visit her family. She has traveled to Iran using her Iranian passport in 1993, 1998, and even after becoming an American citizen in 1999. The Applicant has substantial ties to Iran, including her grandmother, aunt and cousins, all Iranian citizens, who reside there. She did not obtain an American passport until recently.

The Applicant has been notified of the Money Memorandum. (Government Exhibits 2 and 5). The Money memorandum states that, in all cases involving an Applicant who has possessed or used a foreign passport, Guideline C requires a denial of the security clearance request unless the Applicant offers credible evidence that she (1) has obtained official approval for its use from the appropriate United States Government agency, or (2) has surrendered the passport. Although the Applicant states that she is willing to surrender her Iranian passport, she has not done so. Pursuant to the Money Memorandum, she is therefore not eligible to hold a security clearance, on that basis alone.

In addition, as to her Iranian citizenship, the evidence is not convincing that she wishes to renounce her citizenship. Since obtaining her United States citizenship, she has evidently continued to use her Iranian passport for purposes of traveling to Iran. She did not possess a passport from the United States until after having applied for a security clearance. Indeed, she has shown a clear preference for Iran by possessing and using an Iranian passport instead of a passport from the United States, after becoming an American citizen. She remains a dual citizen of both Iran and the United States, and holds passports from both countries. She has not demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against the Applicant under Guideline C.

With respect to Guideline B, the Applicant has substantial foreign contacts, as well as emotional and family ties, in Iran. She has several close family members in Iran who are Iranian citizens of long standing. In addition, her husband and his family are from Pakistan. Although some of the Applicant's husband's family have immigrated to the United States and Canada, the Applicant's father-in-law and other extended family still live in Pakistan. There remains the possibility of

pressure being placed on them, and through them, on the Applicant. It is Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. She has not done so. Accordingly, I cannot say that she would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her foreign influence. The Applicant has not met the mitigating conditions of Guideline B and of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guideline 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

1.c.: Against the Applicant

1.d.: Against the Applicant 1.e.: Against the Applicant

1.f.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: 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