

DATE: September 28, 2001

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-07272

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Marc Curry, Department Counsel

FOR APPLICANT

Richard Gardiner, Esq.

SYNOPSIS

Applicant, who is a naturalized citizen of the US and was a citizen of Iran solely by virtue of his birth and his parents' birth in the country and who surrendered his passport, which he used only to visit his ailing mother in 2000, and renounced his Iranian citizenship, extenuates and mitigates security concerns associated with his active maintenance of a dual citizenship between Iran and the US. By contrast, Applicant's immediate family members who reside in Iran are shown to be still potentially vulnerable to pressure or coercion sufficient to pose continuing foreign influence concerns. Clearance is denied.

STATEMENT OF THE CASE

On May 9, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on May 25, 2001, and requested a hearing. The case was assigned to this Administrative Judge on July 23, 2001 and was scheduled for hearing. A hearing was convened on August 28, 2001, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on three witnesses (including himself) and six exhibits. The transcript (R.T.) of the proceedings was received on September 13, 2001.

STATEMENT OF FACTS

Applicant is a 49-year old president of an internet application company he has been affiliated with since 1991. He seeks

a security clearance at the level of secret. Previously, he held a clearance while employed by another defense contractor between 1983 and about 1986 (*see ex. 1; R.T., at 69*).

Summary of Allegations and Responses

Applicant is alleged to have (1) exercised dual citizenship with Iran and the US, (2) renewed an Iranian passport issued after he became a naturalized US citizen in September 1983, subject to expiration in January 2010, and (3) traveled to Iran in February 2000 and used his Iranian passport instead of his US passport to enter and exit Iran.

Additionally, Applicant is alleged to be at risk to foreign influence by virtue of having (a) his father and four sisters currently residing in Iran, (b) a sister who is an Iranian citizen currently residing in Russia and receiving financial support from Applicant from approximately 1998 to 2000, (c) a sister who is an Iranian citizen currently residing in the US, (d) two nephews who are Iranian citizens currently residing in the US, (e) employed his nephew's spouse (an Iranian citizen) to work in his company, and (f) hired foreign nationals to work in his company (to include individuals from various countries, ranging from India, China, Bangladesh, Jordan, Ghana and Iran) for claimed cost savings.

For his response to the SOR, Applicant admitted using an Iranian passport to enter and exit Iran in February 2000, but denied exercising dual citizenship or currently possessing an Iranian passport. Applicant admitted having a sister and two nephews currently residing in the US and employing his nephew's spouse (an Iranian citizen) to work in his company, but denied the remaining allegations. Specifically, he denied that his father and four sisters are currently residing in Iran. He denied, too, having a sister currently residing in Russia and employing foreign nationals because they are less expensive to employ.

Relevant and Material Factual Findings

A native of Iran, along with his parents and sisters, Applicant completed both his high school and undergraduate studies there. Because he was an only son, he was exempted from service in Iran's military. Following his college graduation, he held several managerial jobs for local companies, which enabled him to save considerable money. Not only has he never served in Iran's military, but he has never voted in an Iranian election. Interested in becoming a US citizen, he emigrated to the US in the Spring of 1977 as a graduate student. He completed his graduate studies in public administration in 1980. He applied for and became a naturalized US citizen in September 1983.

Since coming to the US, Applicant has returned to Iran on just two occasions. The first time was in 1978 to see family and assure himself he had made the right decision to relocate in the US. Assuring himself that his choice of the US as his chosen homeland was the right one, he never returned to Iran over the ensuing 12 years. But for the past ten years, Applicant has had to stay abreast of medical developments with his mother, who was in ill health. He was kept informed of his mother's deteriorating health through telephone communications with relatives in Iran. Only after receiving an urgent call from his mother's primary physician in January 2000 about the precariousness of her medical condition did he reluctantly make arrangements to travel to Iran. Concerned about resistance from US immigration authorities in obtaining a US visa to travel to Iran, he applied for the re-issuance of his old Iranian passport at the Iranian Interest Section, located in the Pakistan Embassy in Washington, D.C., solely for the purpose of expediting the passport process. The passport was issued in a matter of hours in January 2000, and in February 2000 Applicant was on his way to Iran to visit his ailing mother (*see R.T., at 16-17*). She passed away shortly after his arrival in Iran, and he returned several days later (*see ex. 2*).

Applicant has not used his Iranian passport since returning from Iran in February 2000 and has not exercised or accepted any other rights, privileges, or benefits from Iran, or any other state, since becoming a US citizen. Nor does he hold any financial, property, employment, or inheritance rights in Iran or any other foreign state for any purpose (to include fulfillment of any citizenship obligations requisite to maintaining dual citizenship with Iran).

Still, some questions were raised over the circumstances of his returning his still valid passport to the Iranian interest section in Washington, D.C. Having previously expressed an intention to return his Iranian passport and renounce his Iranian citizenship (*ex. 2*), he demurred in taking any concrete steps for over a year. Not until May 29, 2001, some seven days after he certified in his SOR response that he no longer possessed an Iranian passport, did he document his wife's overnighting his passport to the Iranian interest section in Washington, D.C., along with his renouncement of his

Iranian citizenship (*see* exs. A and G). The discrepancy is reconcilable, though, with Applicant's transferring the passport to his spouse several days earlier. Applicant's overall credibility is reinforced by witnesses testifying in his behalf: Ms. A and Mr. B. Taking into account Applicant's own demonstrated candor in tracing his family roots and foreign passport uses, his claims of turning in his passport and renouncing his Iranian citizenship, which an official from the Iranian interest section later confirmed receiving (R.T., at 49), are accepted.

Besides his American-born spouse, whose US citizenship is by birth, Applicant's family currently consists of his six sisters, four of whom are Iranian citizens, still residing in Iran. His mother passed away last year, and his father followed her several months ago (R.T., at 20). Only one of the sisters is considered to work for the government of Iran: she is a school teacher. Of the remaining sisters still residing in Iran, one is a housewife; one works for a construction company; another works for a bank; and the third is pursuing a masters degree. Applicant has sponsored three of these sisters who have received green cards entitling them to come to the US to (*see* exs. B, C, E; R.T., at 23-34). Each of these sisters remain uncertain as to if and when they and their spouses (who also hold green cards) might activate their green cards and emigrate to the US. The fourth sister residing in Iran has expressed interest in coming to the US, but to date has not applied for a green card (*see* R.T., at 39-40).

Applicant's remaining two sisters now reside in the US. One had been living in Russia while her husband completed graduate medical studies at a Russian university (R.T., at 32). She accompanied him to the US on a green card, both hers and husband's (*see* ex. D; R.T., at 32-33). During her stay in Russia, Applicant helped her with expenses. The other sister has worked for Applicant since she came to the US on a green card obtained through Applicant's sponsorship (*see* ex. F; R.T., at 35-37).

Besides his two sisters, Applicant has two nephews with Iranian citizenship living in the US. He currently employs the spouse of one of the nephews, also an Iranian citizen, in his company. Neither his nephews nor the employed spouse are known to have applied for US citizenship. Neither the sisters nor the nephews have expressed any intention of seeking US citizenship or how long each intends to stay in the US.

Applicant assures he would not compromise any classified information in his possession to avert any threatened harm or pressure on his sisters and nephews residing in Iran and would report any attempted intimidation to US officials (R.T., at 66). And he knows of no reason why any of his sisters residing in Iran could be exploited by the government there (R.T., at 69-70). Applicant is considered reliable and trustworthy by those he has interfaced with in past Government contracts (*see* R.T., at 81-84) and has been a positive force in his community (*see* R.T., at 86-89). Still, Applicant remains close to his sisters (all of them) and the nephews he employs, which is no better illustrated than by his helping his sisters and nephews find employment in the US. His strong ties of affection for his immediate family and relatives while understandable and even noble also create foreign influence risks at a time when our nation is especially sensitive to security risks extant in countries with known histories of state-sponsored terrorism.

True enough, the Iranian Government made no known attempts to pressure any of Applicant's immediate family members in the early 80s when Applicant held a secret clearance. However risks of pressure and influence that could be brought to bear on Applicant's immediate family and relatives living in Iran cannot be fairly evaluated on the strength of any requested assumption of a moderating Iran, absent firm evidence to the contrary. The Government of the revolutionary Islamic Republic of Iran that prosecuted and imprisoned two of Applicant's brothers-in-law in the early 1980s (*see* R.T., at 56-60) has a history of hostility with the US. Its current regime has shown little inclination to shed its revolutionary fervor towards the West and the US in particular: Historically, it has devoted its considerable public resources to the discrediting and undermining of America's political, social, religious and economic institutions and values, and by Applicant's own impressions it is a corrupt state. This raises continuing risks of recurrent persecution and intimidation against the brothers-in-laws, waged either directly or through Applicant's sisters, and potentially Applicant. Inferences warrant of continuing risks to pressure and influence on members of his Iran-based immediate family and relatives in the foreseeable future, notwithstanding Applicant's exhibited stern love and support for the US since his becoming a naturalized citizen of the latter.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) lists "binding" policy considerations to be made by Judges in

the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

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.

Disqualifying Conditions:

DC 1: The exercise of dual citizenship

DC 2: Possession and/or use of a foreign passport.

Mitigating Conditions:

MC 2: Indicators of possible foreign preference (*e.g.*, foreign military service) occurred before obtaining United States citizenship.

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

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are 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.

Disqualifying Conditions:

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.

Mitigating Conditions:

MC 1: A determination that the immediate family members 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 persons involved and the United States.

Burden of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense decision. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant presents as a conscientious software executive who after being born and raised in Iran, completing his secondary and undergraduate studies there, and spending several years in his birth country working, emigrated to the US in 1977 in search of better economic opportunities. Claiming his principal affections still lie with the US, he recently surrendered his Iranian passport and renounced his Iranian citizenship.

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the US. In a different vein, the continued residence of his sisters and brothers-in-laws in Iran raise potential concerns about their being vulnerable to future pressure or duress that could result in the compromise of classified information. The issues, as such, raise concerns over Applicant's preference for a foreign country over the US and the potential for members of Applicant's immediate family being placed at risk to pressure or duress to induce Applicant to divulge classified information he might be privy to.

Foreign Preference

By virtue of his birth in Iran to parents of Iranian descent and citizenship, Applicant was endowed with Iranian citizenship through his parents. This citizenship could not be lost except by express renunciation, which never was before May 2001. Since becoming a naturalized US citizen in 1983, Applicant has taken few actions or exercised few Iranian privileges that can be fairly characterized as active indicia of dual citizenship. He has never served in the Iranian military (either before or after his gaining US citizenship) or voted in the latter's elections. He retains no property or financial interests (to include inheritance rights) in Iran, and claims no health, retirement or other health or employment benefits or privileges from Iran.

What sole Iranian privilege of citizenship Applicant exercised is limited to his renewing his Iranian passport in 2000, which he used while entering and exiting Iran to visit his ailing mother in 2000. This limited exercise of dual citizenship invokes DC 1 of the Adjudication Guidelines (exercise of dual citizenship). Use and/or possession of a foreign passport is considered a *per se* basis for denying or suspending a security clearance under the clarifying provisions of the memorandum of August 16, 2000 authored by the Asst SecDef forC3I ("the Money Memo"), unless the foreign passport is surrendered, or the Applicant obtains official approval for its use from the appropriate agency of the US Government.

While Applicant never requested or received any official authorization from any DoD agency for his renewing and using his Iranian passport to see his ailing mother in February 2000, exigent circumstances accompanied his isolated use of the passport. Under such pressing circumstances, our Appeal Board has found no preference indicated by the isolated use of a foreign passport. *See* ISCR Case No. 99-0100 (August 26, 1999). Applicant is credited, too, with surrendering his foreign passport in May 2001 to the Iranian Interest Section of the Pakistani Embassy. Having used his Iranian passport on just the one occasion (since becoming a US citizen) to enter and exit Iran, later surrendering it and renouncing his Iranian citizenship, he absolves himself from any clearance hurdles associated with the Money Memo (*see ex. 3*).

Applicant's avoidance of the strictures of the Money Memo does not absolve him, though, from raised security concerns associated with his past exercise of dual citizenship privileges associated with his use of his Iranian passport. His single use of his foreign passport is enough to enable the Government to meet its initial evidentiary burden.

Overall, though, Applicant persuades that his preference is with the US. He satisfies his burden threshold in several ways: demonstration of a very limited history of exercise of any privileges associated with his Iranian citizenship (*i.e.*, isolated use of a foreign passport), surrender of his Iranian passport, renunciation of his Iranian citizenship, demonstration of a firm, and unwavering support of the US and its institutions since becoming a naturalized US citizen. Applicable mitigating conditions entail: MC 1 (dual citizenship based solely on parent's citizenship) and MC 4 (willingness to renounce dual citizenship). Credited with being a dedicated and trustworthy defense contractor and strong civic contributor by witnesses (Ms. A and Mr. B) who have benefitted from his service and community assistance, he absolves himself of foreign preference concerns and carries his evidentiary burden on the presented issue of whether he his preference lies with his birth country (Iran) or his adopted country (US). Favorable conclusions warrant with respect to the allegations covered by Guideline C.

Foreign Influence

Besides foreign preference concerns, Government finds security risks associated with Applicant's siblings, nephews and hiring of foreign national. Because four of Applicant's sisters (immediate family members) continue to reside in Iran, their status raises security concerns covered by disqualifying condition 1 (DC 1) of the Adjudication Guidelines for foreign influence. The continued residence status of these siblings in Iran, notwithstanding their eligibility to come to the US under the sponsorship of Applicant, pose some potential concerns for Applicant because of the risks of coercion or influence brought to bear on these siblings that could compromise classified information under Applicant's possession and/or control.

From what is known from Applicant's testimony, only one of Applicant's immediate family residing in Iran has a working relationship with Iran's government: the sister who is a school teacher. And none of the Iran-resident sisters of Applicant have any history of ever being subjected to any coercion or influence to date. Nonetheless, they continue to reside in a country whose government is considered corrupt by Applicant's standards, currently maintains no diplomatic ties with the US, and is marked by a post-Shah history of hostility to US interests. What is more, two of Applicant's brothers-in-laws have served time as political prisoners of the successor regime and may or may not be vulnerable to renewed harassment. Iran is a country that continues to draw DoD's security concerns during a period of heightened tensions and alerts throughout the iddle East. This risk exposure to pressure and compromise could be reduced were Applicant able to successfully relocate his siblings and their spouses to the US. But at the moment, this appears to be a work in progress without any predictable outcome.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for any chosen set of guidelines covering risks of foreign influence. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security investigations continue to be governed by the same Change 2 requirements of DoD Regulation 5200.2-R for appraising the security risks associated with the individual's having family abroad: These investigatory requirements of the Regulation as they pertain to hostage situations were never deleted or replaced and retain their applicability according to the dictates of individual cases. *See* 32 C.F.R. Sec. 154.8 (1998) (corresponds to DoD Regulation 5200.2-R, Sec. 2-403).⁽¹⁾ And Section 6.1 of the Directive (under procedures) provides that industrial security clearance applicants be investigated in accordance with the standards in the governing DoD regulation.

So, under these investigatory guidelines, while an applicant with immediate family domiciled in a hypothetical friendly country might pose no risk of a hostage situation, he might not conversely be able to neutralize material risks of exploitation of immediate family members residing in a hostile country. Iran is such a hostile country that has been the subject of studies of friendly and unfriendly countries practicing industrial espionage in recent years. *Cf.* G. Gilder, *Geniuses from Abroad* (Wall Street J. December 18, 1995); S. Wood & C. Chandler, *Selected Economic Espionage Incidents Against the United States, 1980-1994: An Open-Source Research Project* (Defense PSRC), cited with approval in DoD's Adjudicative Desk reference (ADR). Iran can be classed as an un friendly country who is currently known to pose unacceptable hostage risks.

Whatever potential security risks arise as the result of Applicant's having sisters and brothers-in-law in Iran are by no

means mitigated by their holding green cards entitling them to emigrate to the US. So long as they continue to reside in Iran, they will continue to be exposed to unacceptable risks of exploitation and influence. Iran is not suffused with Western-style democratic institutions and remains today a hostile state whose governing institutions are generally incompatible with our own traditions of respect for human rights and the rule of law. While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the character of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. And in Applicant's case, the country of his ethnic heritage has a considerable history of hostage taking or disposition for exerting pressure or influence to compromise the security interests of the US. Applicant's own brother-in-laws were prosecuted by the new Iranian government for their perceived ties to the Shah. Were pressures to be renewed against these brother-in-laws, Applicant's sisters could themselves be vulnerable to pressure as well. In such a case, Applicant might feel himself compelled to go to their assistance. This creates added risk to Applicant at a time when tensions are high in the region.

Invocation of the foreign influence guidelines is not a reflection on Applicant's devotion to the US and its institutions. The guidelines themselves are intended to capture perceived risks of a clearance holder's being faced with a Hobson's choice of abandoning an immediate family member in distress at the hands of a foreign government, or risking the exchanging of classified information to satisfy the foreign government's demands. When Applicant was granted a DoD clearance in 1983, there were no such adjudication guidelines in place to weigh. It would serve no useful purpose to speculate whether he would have been granted a clearance by DoD were the same foreign influence guidelines in force in 1983.

So, because of the continued presence of Applicant's immediate family members in Iran , any potential risk of a hostage situation becomes an unacceptable one, for which the mitigation benefits of MC 1 (presence of immediate family in host country poses no unacceptable security risk) of the Adjudicative Guidelines may not be availed of by Applicant.

Overall, any potential security concerns attributable to Applicant's having immediate family members in Iran are insufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships in Iran. Unfavorable conclusions warrant with respect to sub-paragraph 2.a of Guideline B. By contrast, Applicant is entitled to favorable conclusions with respect to sub-paragraphs 2.b through 2.f, which relate to family members and persons hired by Applicant, all of whom currently reside in the US and pose no unacceptable security risks by their relationships and links to Applicant based on the evidence presented.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance.

CRITERION C (FOREIGN PREFERENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

CRITERION B: (FOREIGN INFLUENCE): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR APPLICANT

Sub-para. 2.d: FOR APPLICANT

Sub-para. 2.e: FOR APPLICANT

Sub-para. 2.f: 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge

1.