

DATE: February 8, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-11192

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Matthew Begert, Personal Representative

STATEMENT OF THE CASE

On September 28, 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 October 13, 2001, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned on November 27, 2001. A notice of hearing was issued on December 5, 2001. The hearing was held on January 16, 2002, at which the Government presented ten exhibits. The Applicant presented six exhibits. The Applicant testified on his own behalf. The Applicant submitted one Post Hearing exhibit consisting of items 1 through 4. The official transcript (Tr.) was received on January 25, 2002.

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). The Applicant received a copy of the Money Memorandum on January 4, 2002.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 51 years of age, and has a Ph.D. in Engineering and Science. He is President of his company, a defense contractor. He seeks a security clearance in connection with his 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 he has acted in such a way as to show a preference for another country over the United

States.

The Applicant was born in Iran in 1950. He came to the United States in 1976, on a student visa to attend college. He became a permanent resident in 1985, and a naturalized citizen of the United States in May 1991. In June 1991, the Applicant obtained his first United States passport. His current United States passport will expire in June 2011. (Tr. P. 27). He obtained a passport issued by the Iranian Government in May 1978, that expired in December 1985. He then renewed his Iranian passport in November 1986, that did not expire until November 1989. His current Iranian passport, renewed in October 1999, will not expire until September 2004.

The Applicant testified that in August 1999, he accompanied his mother to Turkey to help her obtain her permanent residency status from the American Embassy, to enable her to come to the United States. The Applicant explained that he used his Iranian passport to enter the country of Turkey, in lieu of using his United States passport, to avoid having to have his mother wait in line, as she was ill, could not stand and there were no wheelchairs. The Applicant stated that if one carries an Iranian passport, one does not have to wait in line to get a visa. To exit Turkey, however, he used his United States passport. The Turkish customs officer noticed that his United States passport had not been stamped upon his arrival in Turkey. The Applicant explained that to expedite matters he had used his Iranian passport instead of obtaining a visa. The Turkish customs officer assumed that the Applicant had come into the country illegally to avoid paying the \$100.00 fee for the visa. After being questioned and detained for about two to three hours by Turkish customs, the Applicant was permitted to pay the \$100.00 to get his passport stamped, and was then permitted to leave. (Tr. pp. 36-38, and Government Exhibit 7, p.16).

The Applicant stated that the reason he obtained an Iranian passport in October 1999, after becoming a United States citizen, was because he wanted to give his mother power of attorney to sell their property in Teheran. Under the inheritance laws in Iran, the children inherit an interest in the estate of the deceased parent. (Government Exhibit 7, p. 23). Iranian law requires that in order to give his mother power of attorney to sell their property in Teheran, the Applicant needed to obtain an Iranian passport. The Applicant stated that the intention was then to have the proceeds of the sale transferred to the United States.

The Applicant states that upon receipt of the Money Memorandum and appraisal of its ramifications, he sent his Iranian passport to the Pakistan Embassy. (Tr. p. 57). He later testified that he asked his mother to send his passport back. (Tr. p. 87). He then testified that his sister sent it back, because his mother is ill, and unable to go to the Post Office. (Tr. p.87). He then stated that he asked his sister to send it back under his name. (Tr. p. 87). He stated that since moving from the east coast to the west coast in 1982, he left his passport with his mother on the east coast, and has not had possession of it since then.

The Applicant submitted a copy of a certified mail receipt from a United States post office that indicates that he mailed something on December 15, 2001, to the Pakistani Embassy in Washington D.C. There is no evidence in the record, however, that indicates what the item actually was, or whether it was delivered or received by said embassy. (*See*, Applicant's Post Hearing Exhibit Items 1- 4).

The Applicant testified that the last time he traveled to Iran was in 1976. (Tr. p. 78). Over the years, when he would arrange to visit his parents who resided in Iran, he would either meet them in Europe, or they came to the United States. However, a witness for the Applicant testified that the Applicant told him that he traveled to Iran about three months after his father died in 1999, and that the purpose of the trip was to settle his father's affairs. (*See*, Tr. p. 114).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he 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 two sister are citizens of Iran. His mother, who is ill, has recently moved to the United States, and is a permanent resident of the United States. The Applicant telephones her several times a day. Her residence in Iran is currently for sale. The Applicant has two sisters who are Iranian citizens, and reside in Iran. They have applied to come to the United States. The Applicant states that he usually contacts his sisters on the Persian New Year and Christmas. The Applicant states, however, that he maintains a close relationship with his family . (Government Exhibit

7, p. 2).

The Applicant has one sister and one brother who reside in the United States, and are naturalized citizens of the United States. The Applicant's father passed away in 1999.

The Applicant also has an aunt and two cousins who are citizens of Canada, and who reside there. One of these cousins is temporarily living in Paris. The Applicant states that his only contact with these extended family members may be on the Persian New Year and on Christmas. (Tr. P. 90). The Applicant has only a few friends from Iran in the United States. (Government Exhibit 7, pp. 36-37).

The Applicant maintains a close relationship with a friend who is a citizen of Great Britain but is employed in Norway. The Applicant stated that his friend, who was previously his boss at another company, as well as his former thesis advisor at a University he attended, is a consultant with one of the most sensitive programs for the Department of Energy, on the storage of high level radioactive wastes outside of Las Vegas. Since 1985, the Applicant has been in regular contact with him, and has consulted with him on technical issues. The Applicant was also his friend's best man at his wedding in September 2000. The Applicant stated that his friend comes to the United States very often. When he does come, they usually get together for dinner. The Applicant states that his friend does not know about his military work at all. They only talk about their commercial projects. (Tr. p. 54).

The Applicant states that as far as he knows, he has never held a security clearance from the Department of Defense, but he has worked for the Department of Defense for about twenty years. (Tr. p. 85). In the Applicant's sworn statement to the Defense Security Service dated February 16, 2001, various officials from other countries have expressed an interest in his company and/or his specialized field of knowledge. (Government's Exhibit 7, pp. 39- 45).

The Applicant testified that he has received numerous acknowledgments for his professional work with the United States Government and the military. A letter from a Lieutenant General in the United States Air Force thanked the Applicant for his super work that was done to assist the Swiss military in an investigation of a major accident that took the life of many military personnel in the Swiss Alps. (Applicant's Exhibit E). The Applicant stated that he received other letters of commendation from distinguished members of the Congress, two from United States Senators, and one from the Chief of Staff. (Tr. p. 83).

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. Relatives, cohabitants or associates who are connected with any foreign government;
7. Indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, coercion, or pressure.

Conditions 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 his suitability for access to classified information.

The Applicant has held an Iranian passport since 1978. After becoming a naturalized citizen of the United States in May 1991, and after being issued a United States passport in June 1991, the Applicant renewed his Iranian passport in October 1999, to give power of attorney to his mother in order to transfer property and to ultimately receive a financial benefit. After becoming a United States citizen, he has also used his Iranian passport for the convenience of traveling to Turkey, rather than waiting in line for a visa like any other citizen of the United States would have had to do under the circumstances. Indeed, the Applicant has continued to possess an Iranian passport for the convenience it provides to him during international travel. Although he states that he has recently returned his Iranian passport, by maintaining both an Iranian passport and a passport from the United States over the years, he has remained a dual citizen of both Iran and the United States.

There is also great confusion in the record as to whether the Applicant actually traveled to Turkey or Iran in 1999. His own witness testified that he traveled to Iran in 1999. This completely contradicts the Applicant's testimony. This fact standing alone raises serious questions about the Applicant's credibility, and thus his suitability for access to classified information. Notwithstanding this, the evidence is clear that he entered at least one of these countries in 1999, using his Iranian passport after having become an American citizen. Thus, the Applicant has not demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against the Applicant under Guideline C.

In addition, there is absolutely no evidence in the record to establish that what was mailed by the Applicant's sister, on December 15, 2001, in the name of the Applicant, was indeed the Applicant's passport, nor is there any evidence that establishes that the Applicant's passport was ever delivered to the Pakistani Embassy or the Iranian interest section, or that they ever received the Applicant's passport. The evidence submitted establishes only that something was mailed. Accordingly, I cannot find that the Applicant is in compliance with the Money Memorandum.

With respect to Guideline B, the Applicant states on the one hand, that he has a close relationship with his family. On the other hand, he states that he has minimal contact with his two sisters who live in Iran, and who are Iranian citizens of long standing. Furthermore, although his mother is now a permanent resident of the United States, she is still a citizen of Iran.

The Applicant has also maintained a close and continuing foreign contact with a British citizen who is not only a very

close friend, but is also a professional colleague. Given the extremely sensitive nature of the work that the Applicant does, these contacts present enough questions, and possibilities of potential threat, that it would not be in the best interests of the security of the United States to allow Applicant access to the nation's secrets. There also remains the possibility of pressure being placed on these foreign contacts, and through them, on the Applicant. It is the 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. He has not done so. Accordingly, I cannot say that he 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 his foreign influence and foreign preference. The Applicant has not met the mitigating conditions of Guidelines C and B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Paragraph 1 and 2 of the SOR.

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

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b.: Against the Applicant

2.c.: Against the Applicant

2.d.: Against the Applicant

2.e.: Against the Applicant

2.f.: 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