

DATE: June 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-12807

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 32-year-old engineer was born in the U.S. to Iranian parents, returned to Iran as an infant and settled permanently in the U.S. at age 10. Although an Iranian citizen by birth, she considers herself to be an American. Her only contact with Iran was to obtain a passport in 1993 to visit her grandmother in that year and 2000, and it has not been used for any other purpose. She has relatives in Iran but contacts are minimal. The Iranian passport has expired and will not be renewed. She will report any improper contacts by relatives. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On January 8, 2002, 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 (as amended), issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On February 25, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The case was assigned to me on March 19, 2002. A Notice of Hearing was issued on April 9, 2002, and the hearing was conducted on April 25, 2002. At the hearing, Department Counsel offered three exhibits, which were marked as Government Exhibit (GX) 1 - 3. Applicant testified on her own behalf, called five other witnesses, and ten exhibits, which were marked for identification as Applicant's Exhibits (AX) A - J. Without objection, all of the exhibits from both parties were admitted into evidence as marked, and added to the case file. The Transcript (Tr) was received at DOHA on May 7, 2002.

FINDINGS OF FACT

Applicant is a 32-year-old Engineer for a company doing business under contract with DoD. Her company is seeking a

Secret security clearance for Applicant in connection with her employment.

Based on the contents of the case file, including Applicant's testimony and all exhibits, I make the following findings of facts as to the current status of each SOR allegation.

GUIDELINE B (Foreign Influence)

1.a. - Applicant's grandmother, aunt, uncle, and several cousins are citizens and residents of Iran. Her contact with her relatives in Iran is "infrequent." She has no property or financial interests in Iran and does not plan to obtain any such interests. She believes that none of her relatives in Iran know about her employment or access to U.S. secrets (Response to SOR).

GUIDELINE C (Foreign Preference)

2.a. - Applicant exercises dual citizenship with the U.S. and Iran, because Iran considers her to be Iranian because her father was an Iranian. Thus, her Iranian citizenship is derived from her birth to an Iranian father (AX D), and her U.S. citizenship is derived from her being born in the U.S. in September 1969. Applicant was taken to Iran in 1969/1970 by her family and remained there until approximately 1981, when she returned to the U.S. with her family at age 11/12. She recognizes that Iran may consider her to be a citizen of Iran but, "with respect to her loyalty and allegiance," she does not so consider herself (Tr at 100, 101).

2.b. - Applicant possessed a valid Iranian passport from about July 1993 to September 11, 2001, when the passport expired. During this period, she renewed her Iranian passport once.

2.c. - Applicant used her Iranian passport for traveling to and from Iran during September and October 1993 and again during June and July 2000. Applicant used her Iranian passport because she believed "no other means has been available to children born to Iranian fathers." Her primary interest in the Iranian passport is that it would allow her quicker access to her elderly grandmother (Tr at 88). She has seen her grandmother only twice in the past 21 years (Tr at 89). She had read U.S. State Department documents about the dangers inherent in dual citizens traveling to Iran (Tr at 34 and AX D). Applicant was willing to give up her Iranian passport, forgoing any future travel to Iran (Response to SOR) but the passport expired in September 2001 and she does not plan to renew it (Tr at 35). She understands this would mean she would be unable to return to Iran in time if her grandmother suddenly became ill and passed away and that it "would basically eliminate any opportunities to visit [her relatives in Iran] in the future" (Tr at 35).

2.d. - As of March 23, 2001, when Applicant was interviewed by an agent of the Defense Security Service, she intended to renew her Iranian passport when it expired in September 2001. However, Applicant thereafter changed her mind and allowed the Iranian passport to lapse (Response to SOR and GX 3).

Applicant has worked in the U.S. defense sector in 1991 - 1992, 1997 - 1999, and January 2001 to the present (AX G and Tr at 31, 32). During these periods, she held a Secret security clearance for close to 10 years, during which time she did not travel outside the U.S., and had no security-related problems (Response to SOR and Tr at 31, 32). She considers herself to be a "patriotic citizen of the United States" (Id.). She does not believe that any of her relatives in Iran would ask her to divulge U.S. secrets but, in any case, she knows what her response would be - to immediately report such a contact to U.S. authorities (Response to SOR and Tr at 32).

Applicant's father came to the U.S. in 1958 to attend college. He married an Iranian and began a family in the U.S. The family, including Applicant, then an infant, returned to Iran in 1969 for family reasons and for the father to fulfill his obligation to the Iranian government for the college scholarship that allowed him to come to the U.S. (Tr at 41 - 43). He returned to the U.S. in 1981, after the Shah was overthrown, and worked for a defense contractor for 20 years, until his retirement in 2001 (Tr at 42). He held a security clearance during periods when his employer worked on DoD contracts (Id.). In 1981, Applicant would have been about 12 years old. Applicant's relatives live "in a remote area" and have little or no knowledge of his life, or that of Applicant, in the U.S. (Tr at 49). None of them have ever asked him anything relating to U.S. secrets.

One of Applicant's witnesses (Mr. A) helped her father to come to the U.S. after escaping from Iran in the early 1980s.

The witness obtained the help of a U.S. Senator to get Applicant's father into the U.S. (Tr at 61). The rest of the family, including Applicant, was subsequently able to leave Iran and enter the U.S. (Tr at 62). The witness has known Applicant for most of her life and believes her "loyalties lie with this country" (Id.).

A second witness (Mr. B) holds both a military and civilian security clearance. He has known and been friends with Applicant for 10 years (Tr at 69). He states of Applicant: "[S]he is one of the most ethical persons I know and I would have absolutely no problem at all continuing her security clearance" (Tr at 70). Mr. B's opinion of Applicant is matched by that of Ms. C (Tr at 74 - 76) and Mr. D (Tr at 79 - 82).

Although Applicant understands that Iran may consider her to be a citizen of that country, Applicant does not consider herself to be a dual citizen (Tr at 88). She considers herself to be a citizen "only" of the United States, "pledge[s] her allegiance only to this country," and has no preference for any country except the United States (Id.). She learned this love of country from her father (Tr at 90). The "United States of America has my undivided loyalty and allegiance" (Tr at 91). She has read the Money Memorandum about the necessity of surrendering her Iranian passport if she is to hold a security clearance. She believes she has met the criteria of the Money Memorandum (cited below), by allowing the Iranian passport to become invalid (Id.).

Applicant's father and other witnesses have known her for many years on both a personal and professional/academic basis and have nothing but the highest of praise for her integrity, trustworthiness, loyalty, morality, and honesty. Most of them are fellow employees of the company seeking a clearance for Applicant and have security clearances themselves

POLICIES

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to 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.

Conditions that could raise security concerns and may be disqualifying include:

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

Conditions that mitigate security concerns include:

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.
4. Individual has expressed a willingness to renounce dual citizenship.

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 vulnerable to coercion, exploitation, or pressure.

Condition that could raise security concerns and may be disqualifying includes:

1. An immediate family member, or a person to whom the Applicant 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 includes:

1. A determination that the immediate family member(s), cohabitant(s), or associate(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;
3. Contact and correspondence with foreign citizens are casual and infrequent.

I have also evaluated the totality of the evidence under both the specific additional guidelines found in Enclosure 3 to the Directive and the nine general guidelines under Section E2.2.1. of Enclosure 2 to the Directive.

Also applicable in this case is an August 16, 2000 memorandum from Arthur Money, the then Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline" (the Money memorandum). This controlling document specifies that if an applicant possesses a foreign passport, security clearance should be denied or revoked unless the applicant surrenders the passport or obtains approval for its USE by an appropriate agency of the United States government.

CONCLUSIONS

Paragraph 1 - Guideline C (Foreign Preference)

Evidence in the record of a possible preference by Applicant for Iran over the United States

is sparse. Clearly, she did obtain Iranian citizenship by birth, because her father was born in Iran and had Iranian citizenship. Her exercise of Iranian citizenship during her minority consisted of her being taken to Iran as an infant and remaining there until 1981, when she was about 11 years old.

Exercise, in terms of using that Iranian citizenship for some purpose involving choice by Applicant, is limited to obtaining an Iranian passport, or rather by renewing a passport obtained for her as a child by her parents. The first time was in 1993, but the Iranian passport was allowed to lapse and become invalid in September 2001. Using her Iranian citizenship for this purpose is a negative factor, but its meaning and impact must be viewed in the context of the complete record. It is unrefuted that Applicant obtained the Iranian passport to allow her to visit her elderly grandmother and other relatives in Iran, which she did on two occasions over a period of some two decades in the United States. She has looked into the matter but her understanding is that while renunciation of Iranian citizenship is possible in theory, it is "difficult to obtain, thus hindering legal renunciation of Iranian citizenship"⁽¹⁾

Looking at all of the evidence, I conclude that the only real choice Applicant had was to obtain an Iranian passport and be able to visit her grandmother or to not obtain an Iranian passport and risk the likelihood of not seeing her grandmother again. In 1993 and 2000, her lack of understanding about how seriously her obtaining and use of the Iranian passport was viewed by DoD, made her choice easy. Once she obtained that understanding, her new choice, much harder on her personally, was no less clear. Her feelings and allegiance toward the United States, and being able to serve this country's interests, were of paramount interest. Consequently, she allowed the Iranian passport to lapse last year, and has no plans to renew it in the future.

I have considered whether her recent conduct might be a subterfuge, intended only to avoid immediate and negative consequences. I have concluded that it is not. The totality of the evidence of record establishes Applicant as a woman of integrity, who has made considerable contributions to our country over a period of many years and who has never done or said anything suggesting anything less than unequivocal support and dedication for her country. Consequently, I find Applicant has an unequivocal preference of the United States, with her feelings about Iran being influenced by her family's history of having to flee that country to return to the U.S. two decades ago.

Paragraph 2 - Guideline B (Foreign Influence)

The presence of family members in a foreign country is always of concern. Under DOHA precedent, it is an applicant's burden to show that family members in a foreign country are not likely to place pressure on the applicant to the extent she/he is forced to choose between loyalty to the individual(s) and the U.S. As in the present case, the fact that the family members have never sought to use their relationship with Applicant to do something improper is a positive factor, although certainly not dispositive. It is a factor to be considered along with all the other evidence of record. I note that Applicant's relatives live in a remote part of Iran and are mostly illiterate (Tr at 100).

The issue that is generally most important is the risk that an applicant *might* submit to any such pressure and act against the security interests of the United States. In the present case, I conclude there is no evidence suggesting that Applicant would submit to any such pressure. A major positive factor is Applicant's long history of growing up and being educated in the U.S., and her accomplishments and contributions to our country since 1981.

Applicant has never acted in any way as to suggest she could be influenced to act in favor of Iran over the United States. The depth of her emotional, family, economic, and other ties to this country have been developed over a period of many years of hard work and dedication to this nation's interests. Those ties far outweigh any ties she may still have with Iran. She considers herself to be an American (Response to the SOR).

Based on the totality of the evidence, I conclude it is unlikely that Applicant would respond favorably to undue or improper pressure or persuasion. The totality of the record establishes Applicant's strong ties to the U. S, and her strong character and integrity. I conclude she understands her obligations to this country and is unlikely to respond favorably to any attempt to subvert those obligations.

One of the witnesses who has known Applicant and her family for many years stated the following:

If there is a family in the United States of America that truly understands the value of freedom and the principles of this nation, this is that family. And I know full in my heart that if [Applicant were] approached and tried to be coerced into doing anything that will smack of divulging any kind of information, classified or not, I know exactly who she'd go to. She'd go to her security officer. We've discussed that. In fact, most of the engineers I 've worked with over the years have discussed that. That's the safest way to protect anybody, whether they live in this country or not (Tr at 63).

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security." Overall, I conclude that no such doubt exists in the present case. Applicant has demonstrated she possesses the requisite judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 2.a. For the Applicant

DECISION

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

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. Compilation of foreign citizenship laws by Department of Defense, Adjudicative Desk Reference, found at www.dss.mil/training/adr/forpref/county4.htm