

DATE: December 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-12922

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Joseph R. Simon, Esquire

SYNOPSIS

After being born in Iran 53 years ago, Applicant immigrated to the United States in 1978 and became a U.S. citizen in 1990. He obtained an Iranian passport in 1997 and has used it to travel to Iran annually since then to visit his parents, three brothers and two sisters. Although he has stated he intends to surrender his Iranian passport (which he renewed in 2001) and renounce his Iranian citizenship, he has not taken any steps to accomplish either objective. Applicant has failed to mitigate the security concern raised by his exercise of dual citizenship, and he has failed to mitigate the security concern raised by members of his family who are citizens and residents of Iran. Clearance is denied.

STATEMENT OF THE CASE

On April 1, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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 Program*" (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant and recommended referral to an Administrative Judge to determine whether a security clearance should be granted, denied or continued.

Applicant answered the SOR on April 20, 2002, and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on July 1, 2002. On September 12, 2002, a hearing was convened for the purpose of considering whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of five exhibits. Applicant testified on his own behalf. A transcript (Tr.) of the proceeding was received on September 20, 2002.

FINDINGS OF FACT

The SOR alleges security concerns are raised under Guideline C (Foreign Preference) by Applicant's exercise of dual

citizenship through his possession and use of his Iranian passport, and under Guideline B (Foreign Influence) by the Iranian citizenship of his spouse and in-laws and the Iranian residence and citizenship of his mother, father, brothers and sisters. In his answer, Applicant denied the allegation he had exercise dual citizenship (Iran and the United States), but admitted all other allegations set forth in the SOR. I accept Applicant's admissions, and after a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 53-year-old electrical engineer who has been employed by his current employer, a DoD contractor, for the past three years. Although he has previously worked for other DoD contractors (Tr. 35), he has not previously applied for a security clearance.

In 1978, Applicant came to the United States as a student after receiving a scholarship from the Iranian Government. Although his scholarship was rescinded when the Shah was deposed, he continued his education in the U.S. with financial assistance from his parents. Upon completing his education, he remained in the United States for the next 13 years (1984 to 1997) in order to avoid his two-year Iranian military obligation. He married an Iranian citizen in 1988, and became a U.S. citizen in 1990. Although his wife and mother-in-law are still Iranian citizens, Applicant indicates they "are in the process" of becoming U.S. citizens.

When the Iranian law regarding military service changed in 1997, ⁽¹⁾ Applicant applied for an Iranian passport in order to visit his family. He has been traveling to Iran annually to visit his family, each trip being three or four weeks in duration. He explained that he obtained and used the Iranian passport because it is not possible for him to travel to Iran on his U.S. passport (Tr. 38, Gov. Exh. 2). He renewed his Iranian passport in January 2001, extending its validity to January 2006. Applicant sends approximately \$1,000.00 annually to his family.

In August 2000, the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), issued a memorandum to clarify the application of Guideline C, foreign preference, to cases involving possession and or use of a foreign passport, in pertinent part, the ASDC3I memorandum "requires that any clearance be denied or revoked unless the [person] surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." This memorandum has become known as the "Money Memorandum."

Applicant was interviewed by the Defense Security Service (DSS) in March 2001. While expressing reservations about whether he was an Iranian citizen, Applicant stated he would renounce both his foreign passport and his foreign citizenship if required to do so (Gov. Exh. 2). Applicant received the SOR and a copy of the "Money Memorandum" in early April 2002 (Tr. 51). At his administrative hearing, he indicated again he was willing to renounce his Iranian passport and citizenship, and again expressed reservations about whether he is an Iranian citizen (Tr. 20). He testified that he intended to turn in his Iranian passport, but admitted he had not made any attempt to do so as of the date of his administrative hearing (Tr. 37).

The record does not include any information about Applicant's professional expertise or competence.

POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case by case basis with an eye toward making decisions with reasonable consistency which are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of the factors set forth in Section E2.2. of the Directive. In that vein, the Government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter:

FOREIGN PREFERENCE

(Guideline C)

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 a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship;

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

Conditions that could mitigate security concerns include:

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

FOREIGN INFLUENCE

(Guideline B)

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.

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

E2.A2.1.2.1. 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;

Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, or associates(s) in question 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

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the SOR. If the Government established its case, the burden of persuasion shifts to Applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against an Applicant.

CONCLUSION

Having considered the record evidence in accordance with appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case with regard to Guidelines C and B. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E.2.2., as well as those referred to in the section dealing with the Adjudicative Process.

A security concern is raised by Applicant's exercise of dual citizenship. He applied for an Iranian passport after becoming a U.S. citizen, he extended the validity of this passport (January 2001) to January 2006, and he has used this passport for several visits to Iran since 1997--most recently in July 2002. 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.

Although Applicant has stated he is willing to surrender his Iranian passport and renounce his Iranian citizenship--and that he intends to do so at an unspecified time in the future--as of the date of his administrative hearing, he has not taken any concrete steps to surrender his passport or renounce his citizenship. The "Money Memorandum" referenced above required more than an intent and/or a willingness to surrender a foreign passport; it requires "that any clearance be denied or revoked **unless the [person] surrenders his foreign passport** or obtains official approval for its use from the appropriate agency of the United States Government." (Emphasis added). Applicant's clearance cannot be granted in the absence of evidence Applicant has surrendered his passport or obtained approval for its use. Guideline C is concluded against Applicant.

An additional security concern is raised by the members of Applicant's family who reside in and are citizens of Iran. 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.

Since his military service obligation has been resolved by the payment of \$3,000.00 to the Iranian government, Applicant has been traveling to Iran annually to visit his family. Most members of his immediate family (mother, father, brothers and sisters) are retired and do not appear to have any current connection with the Iranian government. However, the DOHA Appeal Board has recently ruled an Administrative Judge "must consider whether the applicant's relatives are in a position that poses a risk that they could be exploited by a foreign power," ISCR Case No. 01-01749 (October 28, 2002). The Government is not required to prove Applicant is at risk because of family ties; rather Applicant has the burden of demonstrated that--notwithstanding family bonds--he is not at risk to being vulnerable because of these connections. Suspicions are aroused by Applicant's failure to surrender his passport and renounce his citizenship of a country whose recent political interests and alliances have been antagonistic toward those of the United States. Guideline B is concluded against Applicant.

FORMAL FINDINGS

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

Paragraph 1. (Guideline C) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Paragraph 2. (Guideline B) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

DECISION

In light of all the circumstances presented by this case, it is not clearly consistent with the national interest to grant Applicant' security clearance.

John R. Erck

Administrative Judge

1. After 1997, an individual with a military obligation could pay the government \$3,000.00 in lieu of military service (Gov. Exh 2).