

DATE: February 13, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-13860

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer Campbell , Department Counsel

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's exercise of dual citizenship, including possession of a foreign passport and his foreign contacts have not been mitigated. His deliberate attempt to conceal material information from the Government on his security clearance application has also not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On July 12, 2002, 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 26, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 28, 2002, and a notice of hearing was issued on November 1, 2002, setting the hearing for November 22, 2002. At the hearing the Government presented six exhibits. The Applicant presented two exhibits. The Applicant also testified on his own behalf. The official transcript (Tr.) was received on December 27, 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." The Applicant received a copy of this memorandum. (*See*, Government Exhibit 5).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and testimony presented at the hearing. The Applicant is 49 years of age and has a Bachelor of Science in Engineering. He is a Senior Manager for 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 1953 in Tehran, Iran. His parents are both Iranian.

In 1975, the Applicant received a student visa from the American Consulate in Iran and came to the United States to attend college. After college, he found employment in the defense industry and decided that he would like to stay in the United States. He became a naturalized United States citizen in 1985. After becoming a United States citizen, the Applicant applied for and obtained an Iranian passport in 1999. The Applicant used his Iranian passport to travel to Iran in 2000.

The Applicant currently possesses a valid Iranian passport, that he obtained in January 1999, and which is valid until January 2005. (Government Exhibit 3). He states that he holds his Iranian passport only as a matter of convenience and not loyalty.

The Applicant served in the Iranian army for two years, from late 1972 until 1974.

The Applicant has never voted in their elections, or exercised any other rights, privileges or benefits provided exclusively for Iranian citizens. He states that he is not employed as an agent or an official representative of any foreign government. He states that he has no foreign property, business connections or financial interests.

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 has two brothers who are citizens of Iran and reside in Iran. He contacts them by telephone every couple of months. He considers himself close to his brothers and other family.

The Applicant has two other brothers and a mother and father-in-law who are dual citizens of Iran and the United States. They reside in the United States.

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant completed a Security Clearance Application dated August 16, 1999. In response to question 11 which asked, "Have you ever served in the military? (If yes, provided in chronological order your military history, begin with the most recent period and include Reserves, National Guard, Merchant Guard, Merchant Marines, and Foreign Military service)." The Applicant answered "No". The Applicant failed to list that he has served in the Iranian army from late 1972 until 1974. The Applicant explained that because it was a compulsive service, he did not consider it to be serving in the military. (Tr. pp. 36-39).

The same security application asked the Applicant to respond to question 15, which asked, "In the last seven years, have you had an active passport that was issued by a foreign government?" to which the Applicant answered "No". The Applicant did not apply for his Iranian passport until October 1999. Therefore, at the time he completed the security clearance application, he had not yet applied for his Iranian passport. Thus, he answered question 15 accurately. (See, Tr. p.44). Accordingly, I find no falsification, here, and this allegation is found for the Applicant.

There is no excuse for the Applicant's inaccurate response on his security clearance application. I find that the

Applicant's response to question 11 on his security clearance application of August 16, 1999, was a deliberate attempt to conceal material information from the Government. The Applicant is an intelligent, highly trained, technically detailed oriented person. He knew or should have known the truth and revealed it.

Paragraph 4 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has violated federal law, Title 18, United States Code, Section 1001.

As previously discussed, the Applicant's deliberate attempt to conceal material information from the Government on his security clearance application dated August 16, 1999, is a violation of federal law, Title 18, United States Code, Section 1001.

Mitigation.

The Applicant has received numerous appreciation awards for his dedicated service in the defense industry. (*See*, Applicant's Exhibit B)

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.

Condition 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;

Condition that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

Condition that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material factors from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate a security concern

None.

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses;

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 his 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 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. 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.

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 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 is a dual citizen of Iranian and the United States. Since becoming a citizen of the United States in 1995, he has lived and worked in the United States, but has maintained his dual citizenship status. He has exercised dual citizenship by applying for and obtaining an Iranian passport in 1999, after having become an American citizen. Although he expresses a willingness to renounce his citizenship and surrender his Iranian passport, he has done neither. Furthermore, the Applicant has failed to comply with the Money Memorandum that requires dual citizens to surrender their foreign passports to be eligible for access to classified information. Presently, the Applicant has not surrendered his Iranian passport. Thus, he 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 foreign contacts, as well as emotional and family ties, in Iran. His family members, in this case his two brothers are citizens of Iran with whom he maintains regular contact. There remains the possibility of pressure being placed on them, 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.

The Applicant's deliberate attempt to conceal material information from the Government on his security clearance application concerning his service in the Iranian army is a violation of federal law under Title 18, United States Code Section 1001. Accordingly, I find against the Applicant under Guidelines E and J.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C, Guideline B, Guideline E and Guideline J of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines C, B, E or J.

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

Paragraph 3: Against the Applicant.

Subparas. 3.a.: Against the Applicant 3.b.: Against the Applicant

Paragraph 4: Against the Applicant.

Subparas. 4.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