

DATE: January 13, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-14369

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Anthony A. Fatemi, Esq.

SYNOPSIS

The Applicant was born in Iran and was a dual U.S. Iranian citizen who renewed his Iranian passport after becoming a naturalized U.S. citizen. In the early 1980's, he served in the Iranian military. His mother, a permanent U.S. alien, is an Iranian citizen. Since coming to the U.S. in 1984, the Applicant has made two brief trips to Iran. In June 2002, he surrendered his Iranian passport and denounced his foreign citizenship. The security concerns engendered by the foreign citizenship of his mother and the concerns about the prior possession of a foreign passport are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On March 11, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 26, 2002, the Applicant answered the SOR and did not request a hearing. A File of Relevant Material (FORM), dated May 21, 2002, was sent to the Applicant. On June 14, 2002, the Applicant requested a hearing in this matter. The case was assigned to me on August 2, 2002. A Notice of Hearing was issued on August 16, 2002, scheduling the hearing which was held on September 9, 2002.

The Government's case consisted of four exhibits (Gov Ex). The Applicant relied on his own testimony and 13 exhibits (App Ex). Following the hearing, an additional exhibit was received, provisions having been made at the time of the hearing for its subsequent submission. Department Counsel (DC) having no objection to its admission, the exhibit was admitted as applicant's exhibit N. The transcript (tr.) of the hearing was received on September 19, 2002.

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). The Applicant admits all of the

allegations, except for SOR subparagraph 1.a. related exercising dual citizenship with Iran and the U.S.

The Applicant is 46 years old and is seeking a security clearance. He has been employed by a defense contractor since January 2000. He is diligent, very hard working, has a strong desire to provide help, and is a highly valued employee who provides important contributions at work. (App Exs E and N)

The Applicant was born in Iran as were his father, mother, son, and two brothers. In 1974, his parents moved to the U.S. just prior a revolution in Iran. (tr. 50, 52) His father, now age 78, is retired, but had worked for 20 years in the purchasing division of the Shah's Army. His father's service was prior the 1974 Iranian revolution and should his father return to Iran he would be very unwelcome, would be prosecuted, put in jail, and possibly executed. (tr. 97) The Applicant's father, son, and two brothers are U.S. citizens. His Father was naturalized in 1998 and his brothers became naturalized citizens in 1988 and 1992. In August 1996, the Applicant became a naturalized U.S. citizen. In March 1998, his mother, now age 63, became a permanent resident of the U.S. His mother has taken the U.S. naturalization tests, (App Ex K) but was unable to meet the statutory education and literacy requirements for naturalization due to her limited understanding of the English language. She never had a formal education and was a housewife all her life. (tr. 42) In June 2002, she again applied for citizenship (App Exs I, J), however the results of the application are not part of the record.

In 1974, the Applicant secured an Iranian passport so he could attend school in England. He has renewed the passport every five years since then. (tr. 72) The last time it was renewed--prior to the Applicant becoming a U.S. citizen--was in 1993. One of the reasons he maintained his Iranian passport was the possibility of remarriage. (tr. 89) In August 1996, the Applicant was issued a U.S. passport. In February 1999, he renewed his Iranian passport which had a February 2004 expiration date; however, he never used it prior surrendering it. (tr. 88) He renewed it because he was going through the divorce process. (tr. 72)

After completing college in England, the Applicant was obligated⁽²⁾ to serve in the Iranian National Service before he could leave the country. From 1982 to 1984, the Applicant served as a conscript for twenty-four months providing engineering services. The service is managed by the Iranian military, it is not a part of the military and the conscripts are not viewed as military personnel. (tr. 78) The Applicant did not volunteer for the service, but served because it was compulsory. (tr. 79, 80) Failure to comply would have led to prosecution and jail.

In 1984, at age 28, after completion of his service, he joined his family who had been living in the U.S. since 1974. He came to the U.S. with his first wife and son who was less than a year old. He and his wife divorced in 1987. Several years after the divorce, his parents thought he should remarry and arranged a marriage. In December 1996, the Applicant and his mother returned to Iran for three weeks for the arranged marriage. The Applicant used his U.S. passport to travel to Iran, but had his Iranian passport stamped when he entered the country. (tr. 71) While in Iran, he met some relatives who live there, but has had no further contact with them. (tr. 58, 59)

Due to immigration requirements, the Applicant's wife was not allowed to accompany the Applicant to the U.S. until September 1997. At that time, the Applicant returned to Iran for less than three weeks before returning to the U.S. with his wife. He entered and departed the U.S. with his U.S. passport but had his Iranian passport stamped. In March 1998, his wife returned to Iran to visit her parents and decided not to return to the U.S. She did not want to live in the U.S. and the Applicant did not want to live in Iran. (tr. 87) His last contact with her was when she returned to Iran. (tr. 56) In July 1999, the Applicant filed in the U.S. for divorce. The Applicant also attempted to get a divorce in Iran. In March 2000, his wife filed for divorce in Iran. (tr. 81) As of September 2000, the Applicant was waiting for the judge to approve the divorce and was maintaining his Iranian passport in order to register the final divorce decree in Iran. His sole purpose in retaining the foreign passport was to finalize the divorce. (Gov Ex 2, tr. 40) In June 2001, the divorce occurred in Iran, while the action was yet pending in the U.S. (tr. 82)

With the divorce completed, the Applicant no longer needed to retain his Iranian passport. He wanted to take action, but did not know how to do so nor did he know what to do with his Iranian passport, there being no Iranian Embassy in the U.S. (tr. 40) When he learned the proper procedure, he took immediately steps. (tr. 83) In June 2002, the Applicant renounced his Iranian citizenship and surrendered his passport through the Pakistani Embassy, (App Exs A and B)

From May 1995 until 2000, the Applicant attended university in the U.S. He has completed two Masters' degrees and is working on his Ph.D.

The Applicant has not exercised nor accepted the rights, privileges, or benefits offered by Iran to its citizens in preference to those of the U.S. He has never traveled or resided in Iran to fulfill citizenship requirements. He does not maintain dual citizenship to protect financial interests in Iran. He does not vote in foreign elections and has never sought or held political office in a foreign country. He owns no real estate, stocks, bonds, or any property in Iran. He maintains no contact with Iranian cultural organizations or social groups, and has no Iranian friends. (tr. 74) He believes the current Iranian government is "completely out of their minds." (tr. 76) He is not willing to bear arms for Iran.

POLICIES

The Adjudicative Guidelines in 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 determinations that 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 in the context of factors set forth in section E 2.2.1. of the Directive as well. 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 an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

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. E2.A3.1.1.

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

1. The exercise of dual citizenship. E2.A3.1.2.1.
2. Possession and/or use of a foreign passport. E2.A3.1.2.2.
3. Military service or a willingness to bear arms for a foreign country. E2.A3.1.2.3.

Conditions that could mitigate security concerns include:

2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship. E2.A3.1.3.2.
4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.

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. E2.A2.1.1.

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

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. E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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. E2.A2.1.3.1.

BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that 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 that 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 the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when the person acts in such a way as to indicate a preference for a foreign country over the U.S. Security concerns over the Applicant's possible foreign preference arise from his exercise of dual citizenship. The Applicant was a dual U.S. Iranian citizen having been born in Iran and lived there, except for periods when he attended college in England, until 1984 when he moved to the U.S. In 1996, the Applicant became a naturalized U.S. citizen.

The Applicant chose to exercise his dual citizenship by availing himself of the benefits of citizenship by maintaining his Iranian passport, which he renewed in February 1999. Disqualifying Condition (DC) 1-(3) applies. The Applicant possessed an Iranian passport until June 2002, which he took with him during his two brief trips to Iran in 1996 and 1997. This use occurred after he had been issued a U.S. passport. DC 2-(4) applies.

After returning to Iran from England, the Applicant had to complete 24 months of National Service before he would be allowed to leave Iran to join his parents in the U.S. The compulsory service as a conscript was not in the military but was managed by the Iranian military. This service occurred before the Applicant became a naturalized U.S. citizen. Therefore, MC 2-(5) applies. I find for the Applicant as to SOR subparagraph 1.d.

The issue of the Applicant exercising dual citizenship and possessing and using an Iranian passport requires an in-depth review. Mitigating Condition (MC) 1-(6) does not apply because there was more to the Applicant's actions than simply his parent's citizenship or the Applicant's birth in a foreign nation. MC 3-(7) does not apply because there is no indication the U.S. Government has sanctioned his exercise of dual citizenship.

In 1993, the Applicant renewed his Iranian passport, prior becoming a naturalized U.S. citizen, and had it stamped when he entered Iran in 1996 and 1997. Until 1996, the only passport the Applicant possessed was his Iranian passport. In 1996, after becoming a naturalized U.S. citizen, he applied for and was issued a U.S. passport. In March 1998, his wife returned to Iran and notified the Applicant she did not intend to return to the U.S. The Applicant started divorce

proceedings in Iran and in the U.S. His wife started divorce proceedings in Iran. Thinking he might need his Iranian passport in the divorce process, the Applicant renewed it in February 1999. However, the passport was not needed and was never used.

In June 2001, the Applicant was divorced in Iran. With the divorce completed, the Applicant knew his Iranian passport was no longer needed. Initially, he did not know how to surrender it and renounce his Iranian citizenship. In June 2002, he did surrender the Iranian passport and renounced his foreign citizenship. C 4⁽⁸⁾ requires only a willingness to renounce foreign citizenship and does not require the actual renouncement of foreign citizenship. However, the Applicant's has gone further than merely expressing a willingness to renounce; he has actually done so.

Since 1984, when he moved to the U.S., he has returned to Iran only twice, each time for less than three weeks, once in December 1996 and again in September 1997. Both trips were related to his marriage. Since coming to the U.S., he has not voted in foreign elections, maintains no foreign property, has no contact with Iranian citizens in Iran or in the U.S., except for his mother who is a permanent U.S. resident alien. The Applicant's renouncement of his Iranian citizenship and surrender of his Iranian passport, coupled with the Applicant's entire picture, are sufficient to apply MC 4. The Applicant has taken objective steps to show and prove his preference and loyalty to the U.S. I find for the Applicant as to SOR subparagraphs 1.a., 1.b., and 1.c.

The Government has satisfied its initial burden of proof under Guideline B, (Foreign Influence). Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family and other persons to whom he is bound by affection are not citizens of the United States, reside in a foreign country, or may be subject to duress. The Applicant's mother--age 63--is an Iranian citizen living in the U.S. as a permanent resident alien. Thus, DC 1⁽⁹⁾ applies.

The burden is on the Applicant to demonstrate that his mother is not an agent 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 the persons involved and the U.S. The Applicant's mother is an Iranian citizen living in the U.S. She is a permanent resident who has applied for U.S. citizenship, but has been unable to meet the statutory education and literacy requirements for naturalization due to her limited English language skills.

The Applicant's parents have lived in the U.S. since 1974. The Applicant's father, siblings and son are U.S. citizens and all live in the U.S. His father is unwelcome in Iran because of his army involvement in the previous government and would face possible death should he return to Iran. His mother does not work for the Iranian or any other foreign government, has never worked for any other foreign government or served in any foreign military. The security concerns engendered by the foreign citizenship of his mother are mitigated and MC 1⁽¹⁰⁾ applies. The Applicant's contact with his mother is an acceptable security risk. I find for the Applicant as to SOR subparagraph 2.a.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

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 (Foreign Preference): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2 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 the Applicant.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. All Iranian citizens are required to serve 18-24 months of National Service.
3. DC 1. The exercise of dual citizenship. E2.A3.1.2.1.
4. DC 2. Possession and/or use of a foreign passport. E2.A3.1.2.2.
5. MC 2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship. E2.A3.1.3.2.
6. MC 1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1.
7. MC 3. Activity is sanctioned by the United States. E2.A3.1.3.3.
8. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.
9. 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. E2.A2.1.2.1.
10. MC 1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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. E2.A2.1.3.1.