

DATE: February 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-16531

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer Campbell, 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. Clearance is denied.

STATEMENT OF THE CASE

On August 9, 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 in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on December 6, 2002. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on December 10, 2002, and he submitted no reply. The case was assigned to the undersigned for resolution on January 14, 2003.

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 Item 9).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the Form and the Applicant's reply. The

Applicant is 50 years of age and has a Bachelors Degree in Computer Science. He holds the position of Vice President of Professional Services 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 Iran in 1952. In 1972 he came to the United States to attend college and he obtained his degree in computer science in 1977. In August 1977, the Applicant became a naturalized citizen of the United States. He states that it was not difficult for him to change his allegiance to the United States as he had become accustomed to its freedoms and lifestyle. In early 1980, the Applicant returned to Iran and lived there until November 1983. During this period he met a woman whom he married and they started a family. After the birth of his first child, the Applicant returned to live in the United States.

The Applicant currently possesses a valid Iranian passport and is unwilling to surrender it. After becoming a United States citizen in 1977, the Applicant renewed his Iranian passport to travel to Iran. The Applicant used his Iranian passport when he traveled to Iran in 1980 and again most recently when he traveled to Iran in July 2001, in preference to his United States passport. He stated that he hid his United States passport in his suitcase so that the Iranian authorities could not find it. The Applicant renewed his Iranian passport in June 2001, and it is currently valid until July 2006. The Applicant also possesses a valid United States passport. (*See*, Government Items 7 and 8).

In his sworn statement to the Defense Security Service (DSS) dated September 30, 1999, the Applicant indicated that he was willing to relinquish his Iranian passport. (*See*, Government Item 5). The Applicant has since changed his mind. In a more recent statement dated January 14, 2002, he indicates that he is unwilling to relinquish his Iranian passport. (*See*, Government Item 6). However, he still considers himself to be loyal to the United States. (*See*, Government Item 5).

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 is a dual citizen of Iran and the United States. She currently resides in Iran. She is ill and the Applicant has chosen to keep his Iranian passport in case of any health emergencies that may arise that would require him to travel to Iran.

The Applicant's wife, his five brothers and a sister are all dual citizens of Iran and the United States, and reside in the United States.

The Applicant's mother and father -in-law, his two brothers-in-law and their families and other aunts and uncles of the Applicant are citizens of Iran and live there. The Applicant has a close relationship with his uncle who is a citizen of Iran and resides in Iran. He maintains telephonic contact with him every three to four months.

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;

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 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 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 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 1977, he has returned to live in Iran for three years between 1980 and 1983, and most recently to visit his family in 2001. He has exercised dual citizenship by obtaining and repeatedly renewing his Iranian passport after having become an American citizen. Although he does not consider himself a dual citizen of Iran and the United States, he continues to exercise dual citizenship by maintaining and using an Iranian passport. He is unwilling to surrender his Iranian passport, as required under the provisions of the Money memorandum. 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 significant foreign contacts, as well as emotional and family ties, in Iran. His family members, in this case his mother, five brothers and a sister are all dual citizens. His uncle, his wife's parents, and their children, with whom the Applicant has a close relationship, are all citizens of Iran and reside there. There remains the possibility of pressure being placed on them, and through them, on the Applicant. It is 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 met the mitigating conditions of Guideline C or Guideline B 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 or B.

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

1.e.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b.: Against the Applicant

2.c.: 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