

DATE: May 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-20908

DECISION OF ADMINISTRATIVE JUDGE

BURT SMITH

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

After becoming a naturalized US citizen, Applicant used his foreign passport to enter Iran on a one-time visit to see his sisters who remained in Iran. Applicant later learned of the DoD policy prohibiting the possession/use of foreign passports by an applicant for a security clearance, and he surrendered his foreign passport to the Iranian government. Applicant's sisters are now approved for US residency, and there exists no potential for duress. Clearance is granted.

STATEMENT OF THE CASE

On May 10, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR details 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 Applicant. It recommended referral to an Administrative Judge to determine whether a clearance should be granted or denied.

Applicant responded to the SOR in a written answer notarized on June 19, 2002, in which he requested a hearing. The case was assigned to me on November 21, 2002. On December 16, 2002, a Notice of Hearing was issued scheduling the hearing on January 23, 2003. At the hearing, the Government submitted six documentary exhibits. Applicant testified, and he submitted a packet of three post-hearing documents. The transcript (Tr.) was received by DOHA on February 4, 2003.

RULINGS ON PROCEDURE

At the hearing, Department Counsel moved to amend the Statement of Reasons by adding the following allegation under Paragraph 1 (Guideline C): "1.f. You traveled to Iran in approximately June or July 2001 using your Iranian passport." Applicant had no objection to the proposed amendment, and Department Counsel's motion was granted. (Tr. 54-55.)

FINDINGS OF FACT

Paragraph 1 (Guideline C - Foreign Preference). Applicant is 56 years old and divorced, and he holds a bachelor of science degree. He is employed by a defense contractor as a department head. Applicant testified at the hearing, and his testimony was credible and worthy of belief.

Applicant was born in Iran in 1946. He completed high school there, and in 1966 he arrived in the US to begin college studies. He completed a few years of preliminary schooling, and in 1969 he enrolled in a university engineering program. In 1973 he graduated with a degree in civil engineering, and he then returned to his native country.

At the time Applicant returned to Iran, the country was under the control of a monarch who enjoyed close relations with the United States. Many Americans were living in the country to assist the government in various capacities, both military and civilian. When Applicant returned to Iran he was required to complete two years of mandatory military service, and during 1974-76 he performed duties as an engineer officer working on joint Iran-US projects. (Tr. 56.)

In 1979, the government of Iran was overthrown by a fundamentalist regime, and life became difficult for Iranian citizens who had ties to the former ruler. Applicant elected to return to the US, and he arrived here soon after the monarchy was overthrown. Applicant became a permanent resident, and in 1982 he was granted US citizenship. In 1984 Applicant accepted employment with his present defense contractor, and he was assigned to non-classified projects. His assignment was later changed to classified projects, and Applicant applied for a DoD security clearance on February 14, 2001. (Gov. Ex. 1.)

Some time after Applicant returned to the US in 1979, his Iranian passport expired. In 1998, six years after he became a citizen, Applicant made plans to visit his family in Iran when his work schedule permitted, but as a native-born Iranian he could not enter that country on his US passport, due to requirements of Iranian law. (U) Although Applicant had been a US citizen for six years, in 1998 he renewed his Iranian passport in order to enter Iran when travel became possible.

In approximately May 2001, Applicant was interviewed by a government investigator as part of the clearance screening process. At the interview, Applicant was asked about his possession of a foreign passport, and he explained the reasons for keeping it, as discussed above. Applicant was advised this would cause "a problem" with his security clearance application. (Tr. 18-19.) Applicant stated a desire to retain his Iranian passport for one visit to Iran because he had not seen his family in over twenty years, but he was willing to surrender the passport upon his return. (Gov Ex. 2.) In approximately June 2001, Applicant used his Iranian passport to visit his family in Iran for two weeks. (Tr. 52.)

Although willing to surrender his passport, Applicant did not know what to do with it when he returned from his visit to Iran. (Tr. 55.) At the hearing, Applicant testified persuasively he was willing to surrender the passport, as required by DoD, but he did not know what steps he should take to accomplish this. (Tr. 48-49.) First, Applicant did not know whether DoD policy required a surrender of the passport to the US Government or to the issuing government. Second, Applicant did not know if he was required to follow a standard DoD procedure developed for the purpose of surrendering foreign passports. (Tr. 70.)

At the hearing, I informed Applicant the correct interpretation of the DoD policy required him to surrender the passport to the issuing government, and that there is no standard procedure for accomplishing this. (Tr. 78.) Applicant was informed he must make inquiries and take appropriate action based upon his best judgment. Applicant agreed, and he was afforded seven days to surrender his passport to the issuing government. Department Counsel had no objection to this procedure. (Tr. 74-77.)

Within the allowed time, Applicant furnished to Department Counsel three post-hearing documents proving he surrendered his passport to the Iranian interest section of the Embassy of Pakistan. (App. Ex. A.) Applicant's documents include a letter to the Iranian government dated January 28, 2003, stating he was surrendering his passport.

As part of its SOR, the Government also alleges Applicant exercises dual citizenship with Iran and the United States. (SOR, subpara. 1.a.) Applicant held two passports, and he used the foreign passport for his travel to Iran. Therefore, the Government's allegation is well-founded. However, Applicant later surrendered his passport to the Iranian government,

and he testified persuasively he considers himself a loyal American citizen. Should a US-Iran conflict occur, Applicant will bear arms against Iran. (Tr. 46.)

Paragraph 2 (Guideline B - Foreign Influence) The Government alleges and Applicant admits that Applicant has two sisters who are Iranian citizens currently residing in Iran. The sisters are not employed, and they have no connection with the Iranian government. (Tr. 35-38.) Applicant telephones his sisters every few months, but he does not send them money. The sisters have been approved for American residency, and Applicant expects them to arrive in this country in the near future. (Tr. 28.) Applicant's parents are deceased, and when his sisters depart Iran he will have no immediate family members residing there.

Applicant has other family members who are citizens of the United States and reside in this country. These include his two children born in the United States, three brothers, and another sister. Applicant testified credibly he has no loyalty to Iran and no intention to return.

POLICIES

Enclosure 2 of the Directive, as amended by DepSecDef Memorandum dated June 7, 2001, sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. The guidelines are divided into those that may be considered in deciding whether to deny a security clearance (Disqualifying Conditions, hereafter DC) and those that may be considered in deciding whether to grant a clearance (Mitigating Conditions, hereafter MC).

Based upon a consideration of the entire record, I find the following adjudicative guidelines have application in 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.

Disqualifying Conditions applicable:

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

Mitigating Conditions applicable:

2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;
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 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.

Disqualifying Conditions applicable:

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or a resident or present in, a foreign country.

Mitigating Conditions applicable:

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;
3. Contacts and correspondence with foreign citizens are casual and infrequent.

The whole person concept. In addition to the above guidelines, the Directive provides in Para. E.2.2.1. that under the "whole person concept" the Administrative Judge shall also consider (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, or duress; and (9) the likelihood of continuation or recurrence.

CONCLUSIONS

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted upon to safeguard it 24 hours a day. The Government is therefore appropriately concerned where reliable information indicates an Applicant for clearance may be subject to manipulation or duress due to foreign preference or foreign influence. On a common sense basis, these unfavorable circumstances might easily contribute to a compromise of defense secrets through coercion, conflicting loyalties, or foreign sympathies.

With regard to burden of proof in DOHA cases, the Government must prove all controverted facts that tend to demonstrate Applicant is ineligible for clearance. Once this burden is met, the Applicant must overcome the Government's case by persuasive evidence in refutation, mitigation, or changed circumstances. However, the Applicant always bears the ultimate and overall burden of proving it is clearly consistent with the national interest to grant him or her a security clearance. Furthermore, the Directive provides "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, Para. E2.2.2.) Thus, the Applicant's burden is a heavy one.

Paragraph 1 (Guideline C - Foreign Preference). In addition to guidance set forth above, the Money Memorandum⁽²⁾ further clarifies DoD policy regarding the possession and/or use of foreign passports. It requires that "any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."

The Government meets its burden of proof as to Applicant's foreign military service and his use/possession of a foreign passport. Applicant performed mandatory military service while he was a citizen of Iran, and DC 3 has application. Applicant later immigrated to America in 1979 using his Iranian passport, and he received a US passport after he became a naturalized citizen in 1982. He later renewed his Iranian passport, and DC 2 has application.

When Applicant was interviewed by a DoD investigative agent in May 2001, he was informed his proposed travel to Iran using his renewed Iranian passport would cause "a problem" with his security clearance application. At the time, Applicant was not aware of the prohibitions contained in the Money memorandum. The following month, Applicant completed a two-week visit to Iran to see his family for the first time in over twenty years. Eighteen months later he surrendered his foreign passport to the Iranian government. The delay was caused by Applicant's uncertainty concerning the appropriate steps to take in surrendering his passport.

Applicant's foreign military service occurred before obtaining United States citizenship, and MC 2 is applied in mitigation. Furthermore, in keeping with the Money Memo, Applicant surrendered his foreign passport, and this is also a mitigating factor. Although Applicant once used his Iranian passport to visit his family, he was not aware at the time of the Money Memo and its prohibitions against using a foreign passport. To Applicant's credit, he surrendered his foreign passport after learning of these prohibitions and determining the appropriate method of disposition.

With regard to his exercise of dual citizenship, Applicant entered Iran on his foreign passport, and DC 1 applies because this is an act of dual citizenship. Under the Money Memo, Applicant's use of his foreign passport is not mitigated

because of personal necessity, convenience, or requirements of foreign law. However, at the time Applicant used the passport he did not know of the prohibitions in the Money Memo, but after learning of them he surrendered his foreign passport to the Iranian government. Applicant's one-time exercise of dual citizenship is mitigated by his initial lack of knowledge and subsequent compliance with DoD policy.

Paragraph 2 (Guideline B - Foreign Influence). Applicant admits he has two sisters who are citizens of Iran and reside in that country, and DC 1 has application. Applicant's sisters are citizens of a foreign government with interests hostile to the United States, and the sisters may be subject to duress.

Applicant responds in mitigation that his two sisters are unemployed homemakers who have no connection with the Iranian government. As such, they are not likely in a position to be exploited for intelligence purposes. Furthermore, the sisters have been approved for US residency, and they will soon join Applicant in America.

Additionally, Applicant has established a record of strong ties to this country as a naturalized citizen, and he is willing to bear arms against Iran in the event of a conflict. Applicant was forced to leave Iran because he was part of a pre-revolutionary establishment having favorable relations with the United States, and he has no sympathy for the current regime. He has visited Iran only once in twenty years, and he has no desire to return. Additionally, Applicant's extended family members are also citizens of the United States, and his two children were born here. Applicant's evidence of his sisters' favorable situation and his own allegiance to this country mitigates the Government's concern under Paragraph 2 of the SOR.

In reaching the above conclusions, I have considered all factors of the whole person concept. On the basis of the entire record, I conclude Applicant brings himself favorably within each of the factors, as set forth in the Directive.

On balance, I conclude the Government has met its burden of proving all factual allegations in the SOR. For his part, the Applicant has introduced persuasive evidence in refutation, mitigation, or changed circumstances which offsets or outweighs the Government's case.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1. Foreign Preference: For the Applicant.

Subparas. 1.a.-1.f.: For the Applicant.

Paragraph 2. Foreign Influence: For the Applicant.

Subpara. 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 Applicant's request for a security clearance.

Burt Smith

Administrative Judge

1. - - - -

2. " " " "