

DATE: February 13, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-23755

## **DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's dual citizenship, including use and possession of a foreign passport has been mitigated. Her significant foreign contacts, including her immediate family and strong emotional ties have not been mitigated. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 17, 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 24, 2002, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned on November 26, 2002. A notice of hearing was issued on December 10, 2002, scheduling the hearing for January 16, 2003. At the hearing, the Government presented four exhibits. The Applicant presented four exhibits and called three witnesses. She also testified on her own behalf. The official transcript (Tr.) was received on January 30, 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 Exhibit 3).

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the testimony presented

at the hearing. The Applicant is 53 years of age. She has a high school diploma and is currently in her first year of college. She holds the position of Technical Support Specialist for a defense contractor. She seeks a security clearance in connection with her 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 is a dual citizen of Iran and the United States. She was born in South Vietnam in 1949. She came to the United States in 1971, at the age of twenty eight, with her ex-husband who was a United States citizen. The Applicant became a naturalized United States citizen in 1977.

She and her first husband divorced in 1982.

In 1987, the Applicant re-married an Iranian citizen. The Applicant's husband had come to the United States from Iran to obtain a college education. He was enrolled in a Master's program in college when he met the Applicant in 1984. After he completed his Master's Degree in 1986, his student visa expired, and he chose not to stay in the United States illegally. He returned to Iran. He and the Applicant corresponded by letter for about a year before they arranged to meet each other in Korea to get married. After they were married in Korea, the Applicant returned to the United States and her spouse went back to Iran. For about a year and a half, the couple lived apart. During this period the Applicant applied for her husband's immigration documentation and waited for it to be processed to permit him to return to the United States. In May 1989, the Applicant's husband was issued a green card and permitted to come to the United States. The Applicant explained that she was told that it took so long time because a criminal record check was required, as her husband had previously lived in the United States.

According to the Applicant, she first traveled to Iran using her United States passport, but was told that it would not be honored, and she would have to obtain an Iranian passport if she wanted to visit Iran in the future. In 1999, the Applicant applied for and obtained Iranian citizenship and a passport, by virtue of her husband being Iranian, in order to visit her husband's sick mother in Iran. This Iranian passport will not expire until November 2004. The Applicant did not use her Iranian passport until her most recent visit to Iran in March 2002.

Upon learning that her dual citizenship status would cause problems with holding a security clearance, the Applicant destroyed her Iranian passport in front of the security department at her place of employment, and she renounced her Iranian citizenship.

The Applicant's husband fulfilled his Iranian military duty before he came to the United States to attend college. He was an electrical engineer, and is now a computer programmer.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's husband is an Iranian citizen living in the United States. The Applicant indicated that he is hesitant to apply for United States citizenship because he fears the Iranian Government would not allow him to enter Iran to visit his ailing mother who is an Iranian citizen.

The Applicant's mother-in-law, brother-in-law, and uncle are all citizens of Iran and reside in Iran. The Applicant also has a sister-in-law and six nieces and nephews who are citizens of Iran and reside there. The Applicant and her spouse send approximately \$1,500.00 a year to her mother-in-law in Iran to assist her financially.

#### Mitigation.

The Applicant's younger sister, her brother-in-law and her husband testified that the Applicant is considered to be an extremely honest, reliable, trustworthy, and hard working American. (See, Tr. pp. 62-64, 68 and 72).

## 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 Applicant is presently qualified 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 her suitability for access to classified information.

The Applicant has surrendered her Iranian passport and renounced her Iranian citizenship, as required under the provisions of the Money Memorandum. Thus, she has demonstrated an unequivocal preference for the United States. Accordingly, I find for the Applicant under Guideline C.

However, with respect to Guideline B, the Applicant has significant foreign contacts, as well as emotional and family ties, in Iran. The Applicant's husband is an Iranian citizen living in the United States. He is not a United States citizen. The Applicant's mother-in-law, brother-in-law, sister-in-law and nieces and nephews are citizens of Iran and they reside in Iran. The Applicant and her husband maintain close contact with their family in Iran. 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. She has not done so. Accordingly, I cannot say that she 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 B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guideline 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: For the Applicant.

Subparas. 1.a.: For the Applicant 1.b.: For the Applicant 1.c.: For the Applicant

1.d.: For the Applicant

1.e.: For 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