

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant came to the U.S. from Iran in 1977 to attend college, and has remained here, raised a family, began a professional career, and contributed significantly to the national defense. He became a U.S. citizen in 1997 and obtained a U.S. passport. He obtained an Iranian passport in 2000, in order to care for his ill mother. He surrendered the Iranian passport and renounced Iranian citizenship in 2002. Mitigation/extenuation has been demonstrated. Clearance is granted.

CASENO: 01-26893.h1

DATE: 05/22/2002

DATE: May 22, 2002

In Re:

SSN: -----

Applicant for Security Clearance

SCR Case No. 01-26893

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Katherine Antigone Trowbridge, Department Counsel

FOR APPLICANT

Mark H. Zoole, Esquire

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SYNOPSIS

Applicant came to the U.S. from Iran in 1977 to attend college, and has remained here, raised a family, began a professional career, and contributed significantly to the national defense. He became a U.S. citizen in 1997 and obtained a U.S. passport. He obtained an Iranian passport in 2000, in order to care for his ill mother. He surrendered the Iranian passport and renounced Iranian citizenship in 2002. Mitigation/extenuation has been demonstrated. Clearance is granted.

STATEMENT OF THE CASE

On December 31, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended), issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On January 18, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The case was assigned to me on March 8, 2002. A Notice of Hearing was issued on March 18, 2002, and the hearing was conducted on April 3, 2002. At the hearing, Department Counsel offered two exhibits, which were marked as Government Exhibits (GX) 1 and 2. Applicant testified on his own behalf and offered nine exhibits, which were marked for identification as Applicant's Exhibits (AX) A - I. The Transcript (Tr) was received at DOHA on April 11, 2002.

FINDINGS OF FACT

Applicant is a 46-year-old "President/CEO" of a company doing business under contract with DoD. His company is seeking a Secret security clearance for Applicant in connection with his employment.

Based on the contents of the case file, including Applicant's testimony and all exhibits, I make the following findings of facts as to the current status of each SOR allegation.

GUIDELINE C (Foreign Preference)

1.a. - Applicant does not exercise dual citizenship with Iran and the United States. He does not consider himself to be a citizen of Iran and he is willing to again renounce Iranian citizenship in any way requested of him (AX B, AX C).

1.b. - Applicant does not possess an Iranian passport, valid or invalid, having surrendered said passport in March 2001 by sending it (through his attorney and with an accompanying letter) to the Iranian Interests Section of the Pakistani Embassy in Washington, D.C. (AX E, Affidavit from counsel, dated January 18, 2002, and AX I, Letter from Pakistani Embassy, dated March 7, 2002).

1.c. - Applicant applied for an Iranian passport on January 9, 2000, after becoming a United States citizen on January 7, 1997 and obtaining a United States passport on February 22, 1997. He did so for the sole purpose of being able to visit his elderly and ill parents in Iran, on short notice, in cases of a medical emergency (G'S 2, AX D, AX H). He has used the Iranian passport only once, and for the purpose stated in his sworn statement.

GUIDELINE B (Foreign Influence)

2.a. - Applicant's mother, father, and two siblings are citizens of Iran and currently reside in that country;

2.b. - Applicant has a sibling who is a citizen of Iran and who currently resides in Germany.

POLICIES

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to 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.

Conditions that could raise security concerns and may be disqualifying include:

None that are currently applicable under the facts of this case.

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: (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 vulnerable to coercion, exploitation, or pressure.

Condition that could raise security concerns and may be disqualifying includes:

1. An immediate family member, or a person to whom the Applicant 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 includes:

1. A determination that the immediate family member(s), cohabitant(s), or associate(s) 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;

I have evaluated the totality of the evidence under both the specific additional guidance found in Enclosure 3 to the Directive and the general guidelines under Section E2.2.1. of Enclosure 2 to the Directive.

CONCLUSIONS

Paragraph 1 - Guideline C (Foreign Preference)

- 1.a. - At the time the SOR was issued on December 2001, Applicant was a dual citizen of Iran by virtue of his parents' citizenship in that country and of the United States by naturalization. In his response to the SOR, Applicant renounced his Iranian citizenship to DoD, and described the progress of his efforts to surrender his Iranian passport (AX A). That surrender was acknowledged by the Pakistani embassy in early March 2002 (*See*, AX I).

1.b. - This allegation, concerning Applicant's obtaining of an Iranian passport January 2001, after becoming a naturalized United States citizen in January 1997 raises a legitimate question as to whether this act indicated or suggested a preference for Iran over the United States. In his personal appearance testimony, in his security clearance application, and Sworn Statement to an agent of the Defense Security Service (DSS), Applicant has consistently explained that he was concerned about the failing health of his elderly parents, who lived in Iran, and the likely need that he would have to travel there on short notice if a health crisis occurred. He used the Iranian passport only once, when his mother became very ill, received extensive treatment in the United States, and wanted to return to Iran (Tr at 30, 34).

He did not know that obtaining the passport would cause any concerns regarding "my loyalty to the United States, my citizenship, and foreign preference. I'm a proud U.S. citizen. I earned this privilege by working very hard and maintaining a responsible lifestyle all throughout my life. Just for the record, I have only one preference, and that's to the United States." Once learning of the Government's concerns, he promptly took steps to surrender the passport.

Applicant has used only his United States passport since obtaining it, with the sole exception, discussed above, being his desire to accompany his ill mother back to Iran, after medical treatment in the United States. Considering the purpose for his obtaining the Iranian passport in 2000, I do not find that he did so out of any preference for Iran or even for the sake of his own convenience. Obtaining a visa from Iran using his United States passport would likely take 25 days or longer (Tr at 36). Applicant was facing a situation where using his United States passport, and having to obtain an Iranian visa, was not a viable option, considering his mother's condition (Tr at 35). I do not construe his actions in this regard as showing any preference for Iran over the United States.

Applicant disclaimed any other interest in visiting Iran and repeatedly stated his willingness to give up his passport, which he has, in fact, done. He has made this choice knowing that if his parents become seriously or terminally ill, he will likely not be able to obtain a visa and get to Iran for close to a month. Under these circumstances, I find that his present choice to surrender his Iranian passport and renounce his Iranian citizenship demonstrates a great deal of character and integrity. His choice shows that he places his allegiance to, and identification with, the United States above that of family obligations, regardless of the emotional impact that will occur at some future time.

I note that Applicant has been in the United States since 1977, when he arrived, with his wife, to attend college. Upon graduation, he began teaching on the university level until 1988, becoming a tenured professor at 28. In 1988, he joined a major aerospace defense contractor, as a Senior Technical Specialist. He provided guidance a technology assessments on several major weapons systems. In 1993, he started his own software engineering company and has been President and CEO ever since (Tr at 26 - 28). His company's activities include a number of next-generation projects (Tr at 28). His wife is a United States citizen, as are two native-born daughters, who are both in their twenties, university graduates, and working in their chosen professions.

Foreign Influence

The presence of family members in a foreign country, particularly a country such as Iran, is always of concern. Since Iran is not generally friendly to the United States, the possibility of a risk must certainly be considered. But, because so many Americans have ties to, and/or relatives in, foreign countries, that fact alone is not automatically a concern. It becomes a concern when there is some reasonable foreseeable risk that the relationship might be exploited to the detriment of the United States.

Under DOHA precedent, it is an applicant's burden to show that family members in a foreign country are not likely to place pressure on Applicant to the extent he is forced to choose between loyalty to the individual and the United States. As in the present case, the fact that the family members are elderly and have never sought to use their relationship with Applicant to do something improper is a positive factor, although not dispositive. The same is true as to the family members residing in Germany.

The issue that is generally most important is the risk that an applicant might submit to such pressure and act against the security interests of the United States. In the present case, I conclude there is no evidence suggesting that Applicant would submit to any such pressure and act against U.S. interests. The fact that his wife and native-born daughters is probably the strongest tie anyone could have with our country. Right behind that factor is Applicant's long history since coming to the United States in 1977. His story comes close to the stereotypical American dream (Tr at 36 - 38). He considers himself to be an American and will not act against United States interest (Tr at 51 - 53, 60, 61).

Other than the presence of parents and other family members in Iran, Applicant has no substantial ties, financial or otherwise, to that country (Tr at 40). While he does have an eventual interest in his parents house in Iran of \$10,000.00 to \$20,000.00, that figure is far outweighed by his personal net worth in the United States of about \$10,000,000.00, plus his interest in his company. Applicant is a product of American higher education (Tr at 41, 42), he has contributed greatly to our nation's security for many years, and his company has recently been asked to work on classified defense contracts, for which he needs a clearance (Tr at 43, 44).

Considering the totality of the evidence, since coming to the United States, and particularly since beginning the naturalization process, Applicant has never acted in any way as to suggest a preference for Iran over the United States. The depth of his emotional, familial, economic and other ties to this country has been developed over a quarter century of hard work and dedication to this nation's interests.

Guideline C (Foreign Preference)

In the present case, the evidence does not support the current validity of SOR allegations 1.a., 1.b., and 1.c. Applicant is not exercising dual U.S. - Iranian citizenship (Disqualifying Conditions (DC) 1); he does not possess an Iranian passport

(DC 2), and has not acted in such a way as to come within any of the other Disqualifying Conditions, DC 3 - 8. Overall, I find for Applicant as to all Guideline C allegations

Guideline B (Foreign Influence)

The lack of any foreign preference makes it even less likely that Applicant would respond favorably to undue or improper pressure or persuasion. The totality of the record establishes Applicant's strong ties to the United States, and his strong character as to work ethics and family relationships. I conclude he is a man of integrity, who understands his obligations to his country and is unlikely to respond favorably to any attempt to subvert those obligations. My conclusions as to Guideline B are reached first independently of my conclusions under Guideline C. However, when then made in the context or the totality of the record under both Guidelines, the overall conclusion in favor of Applicant is made even stronger.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security." Overall, I conclude that no such doubt exists in the present case. Applicant has demonstrated he possesses the requisite judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

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

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. 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 Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE

