

DATE: June 2, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-00318

## **DECISION OF ADMINISTRATIVE JUDGE**

**BURT SMITH**

### **APPEARANCES**

#### **FOR GOVERNMENT**

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

#### **FOR APPLICANT**

Sheldon I. Cohen, Esq.

### **SYNOPSIS**

As a conscript in the Iranian army, Applicant was subjected to a near-fatal nerve gas attack by Iraqi forces. After his recovery, Applicant fled to Germany, taking his younger brother, and there he voluntarily furnished valuable information to American intelligence agents. He was officially sponsored for expedited US residency, and he overcame serious hardships to gain a scientific education and successful employment in America while acting as guardian of his younger brother. After twice using his Iranian passport concurrent with his possession of a US passport he learned of DoD restrictions against dual passports, and he surrendered the Iranian passport. Applicant has Iranian and German family members, but no undue foreign influence exists. Clearance is granted.

### **STATEMENT OF THE CASE**

On September 26, 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 October 8, 2002, in which he requested a hearing. The case was assigned to me on November 26, 2002. On December 16, 2002, a Notice of Hearing was issued scheduling the hearing on January 30, 2003. At the hearing, the Government submitted four documentary exhibits. Applicant presented testimony from himself and four witnesses, and he submitted twelve documentary exhibits. The transcript (Tr.) was received by DOHA on February 6, 2003.

### **FINDINGS OF FACT**

Paragraph 1 (Guideline C - Foreign Preference). Applicant is 38 years old and married, and he holds an MS degree in

electrical engineering. He is employed by a defense contractor as a senior engineer. Applicant and four supporting witnesses testified at the hearing, and the testimony of each witness was credible and worthy of belief.

In Applicant's written answer he admits to all of the Government's factual allegations in the SOR. In view of Applicant's admissions, the factual allegations are found to be true, and they are incorporated herein. In his response to the Government's allegations, Applicant presents a case in mitigation.

Applicant and all members of his immediate family were born in Iran. Applicant's father died in 1982. His mother is 59 years old and lives with Applicant in the US as a resident alien, although she returns to Iran several months a year. Applicant has a younger brother who is a naturalized US citizen residing in America, and Applicant has an older sister who resides in Iran with her husband. While living in Iran as a youth, Applicant received a secondary education, and he graduated from high school in 1982 at age 18.

After completing high school, Applicant was conscripted into the Iranian army by the Government of Iran (GOI), and he was trained as a field medic. When Applicant entered military service, Iran was at war with Iraq and Applicant was ordered to an area where both armies were heavily engaged in combat. Applicant's unit was targeted with nerve gas dispensed by Iraqi airplanes, and many Iranian soldiers died in the attack. Applicant was temporarily blinded, and he suffered near-fatal injuries to his respiratory system. He was hospitalized for six months, and upon his recovery in mid-1985 he was released from military service. (Tr. 75-80.)

Applicant decided to leave Iran in order to pursue a life free of the dictatorship imposed by the ruling fundamentalist regime in the GOI. At the hearing, Applicant testified that life in Iran was a desperate existence where "there was no freedom, no future, no nothing." (Tr. 81.) Having completed his required military service, Applicant was then permitted to travel, and in 1985 at age 21 he went to Germany on a tourist visa.

Upon reaching Germany, Applicant applied for asylum as a refugee, and he was allowed to stay in the country pending a ruling on his application. Applicant secured work as a waiter, and he began to study German at adult education classes. (Years later, his German-born instructor became his wife.) Applicant worried about the future of his 14 year-old brother still in Iran, and in 1986 he arranged for his brother to come to Germany and live with him. As guardian of his younger brother, Applicant supported him financially and enrolled him in school. In time, Applicant and his brother each learned to communicate in German.

During Applicant's interview process as an asylum seeker, he was asked about his former military service, and he revealed he had been subjected to a nerve gas attack by the Iraqis. This information found its way to an American intelligence agency in Germany, and Applicant was asked to provide US agents with details of his experience. Over a period of several days, Applicant voluntarily furnished information about Iraqi chemical warfare, and he provided personal details concerning the effects of nerve gas. In appreciation for this information, the American agency offered to help Applicant secure a visa to reside in America. With this assistance, Applicant and his brother were granted visas for permanent residency in the United States. (Tr. 82-86.)

Applicant and his brother arrived in the US in January 1988. They first went to a southwestern state where they had relatives, and Applicant worked 80 hours per week at two full-time minimum-wage jobs. After six months, Applicant decided to live permanently in the eastern US, and he moved to his present city on the Atlantic coast. Applicant requested and received official state approval to act as legal guardian of his younger brother, and he again worked at two jobs while also studying English. Applicant's German-born fiancée arrived in the US in 1990, and the couple was married in February 1991. (Tr. 88-91.)

At the hearing, Applicant testified persuasively he is dedicated to American values that give to citizens individual liberty and opportunity. (Tr. 87.) He has made a strong effort to assimilate into American society and to contribute as a citizen. Applicant testified "I believe in the system here, the freedom. It's my home." (Tr. 92.) Upon first arriving in the US, Applicant and his brother registered for the military draft. (App. Exs. B, H; Tr. 102.) They avoided government assistance programs in favor of individual work and study.

Applicant has continued on this path of personal effort since arriving in the United States. He has earned bachelor's and master's degrees in electrical engineering, with honors, and he is regarded by his supervisors and associates as an

outstanding employee. Witnesses testified credibly that Applicant is a stable, reliable and trustworthy citizen. (1) His younger brother completed college and chiropractic school, and he has established his own medical practice. He gives much credit to Applicant for raising him and guiding him into adulthood.

Before Applicant became a US citizen in September 1993, he returned to Iran in May 1992 and August 1993 to visit his family. Having only an Iranian passport at that time, he used it for these visits, but after receiving American citizenship, Applicant traveled overseas frequently using his US passport. However, Applicant was aware he could not travel to Iran on his US passport because Iranian law does not recognize a change or renunciation of citizenship by persons born in Iran. Applicant could visit his family in Iran only by using an Iranian passport, and he applied for one in early 1998, his original passport having expired.

In March 1998, Applicant visited his sister in Iran for two weeks or so, entering and departing the country with an Iranian passport. (Tr. 113-116.) After that visit, Applicant did not again use his Iranian passport, except for one time in May 2000 when he traveled to Turkey without a visa in his US passport, mistakenly believing Turkey admitted US citizens on their passport alone. Upon learning of his error at the border, Applicant presented his Iranian passport, which did not require a Turkish visa, and he was allowed to enter the country. (Tr. 117-118.)

At the hearing, Applicant made it clear he considers himself only an American citizen, and he does not claim dual citizenship with Iran. (Tr. 125-126.) When Applicant received the Government's SOR in September 2002 he became aware of the DoD policy that possession of dual passports is considered an indication of a foreign preference for another country. Upon learning of this policy, Applicant expeditiously surrendered his Iranian passport to the GOI, accompanied by a letter informing the GOI he was an American citizen and he renounced his Iranian citizenship. (App. Ex. J.)

Paragraph 2 (Guideline B - Foreign Influence) Applicant's German-born wife has lived in the United States as a resident alien since she married Applicant in 1991. She considers America her home, and she has no foreign property, bank accounts, or business interests in Germany. Her parents are retired, and they live in a rented apartment in Germany. Applicant's wife visits them about once a year or so, and they have visited Applicant and their daughter in the United States. Applicant's wife has not yet applied for US citizenship, but she is presently considering this step. (Tr. 118-122.)

Applicant has a sister who remains in Iran with her husband and family. Applicant's sister is a housewife, and she has no connection with the GOI. Her husband owns a small business, and he also has no GOI connections. Applicant telephones his sister occasionally, but he does not send money to her. Applicant has no property or other financial interests in Iran. (Tr. 73-75.)

As noted earlier, Applicant supported his younger brother as a guardian until the brother completed university and established a medical practice as a chiropractor. Applicant's brother is a naturalized citizen with strong ties to America, and he is not subject to any foreign influence that would cause concern about Applicant's allegiance to the United States. (Tr. 49-69.)

Applicant takes his US citizenship very seriously, and he has developed a strong reputation as a honest, hard working person who has overcome much adversity to gain a scientific education from American colleges while simultaneously supporting his wife and his brother. He is a homeowner, and he is successfully employed by a defense contractor. His supervisors, co-workers and friends uniformly describe him as honest, reputable, and dedicated to American values. (App. Exs. D-G, L.)

## 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:

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country;
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.
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

**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 commonsense 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 DoD "Money Memorandum"<sup>(2)</sup> of August 16, 2000, 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." Under the Money Memorandum, possession and/or use of a foreign passport is not mitigated by reasons of personal convenience, safety, requirements of foreign law, or the identity of the foreign country.

Applicant used his Iranian passport to enter and depart Iran on two occasions in May 1992 and August 1993 before he became a US citizen and received a US passport. At the time of these visits to Iran, Applicant had no other passport except the one issued by the GOI, and his pre-citizenship uses of the Iranian passport are not disqualifying under Guideline C pertaining to foreign preference.

In August 1998, five years after receiving US citizenship and an American passport, Applicant again traveled to Iran to see his sister, and he used his Iranian passport for the same reasons as before, *i.e.*, Iranian law does not permit native-born Iranians to enter Iran with a foreign passport. In May 2000, Applicant used his Iranian passport to enter Turkey because, although he was traveling on his US passport, Applicant inadvertently failed to obtain a visa to enter Turkey and he was informed at the border he could not enter the country on his US passport.

At the time of Applicant's August 1998 and May 2000 uses of his Iranian passport, Applicant was unaware that his use of an Iranian passport might be construed as an indicator of a conflicting loyalty, nor did he intend to present this impression. Furthermore, the Money Memorandum, later issued in August 2000, was not in effect at the time, and the present DoD restrictions on possession and/or use of dual passports were not yet in force.

These circumstances, standing alone, do not mitigate Applicant's two uses of his Iranian passport concurrent with his American citizenship because the use of dual passports is a negative factor in determining whether a conflicting allegiance exists. Therefore, DC1 and DC 2 have application. However, Applicant's lack of knowledge provides a background for consideration of his quick action after he became aware of present DoD policy.

When Applicant learned of the restrictions set forth in the Money Memorandum he expeditiously surrendered his Iranian passport to the GOI and simultaneously renounced his Iranian citizenship. In view of Iranian law, Applicant's renunciation of citizenship was probably rejected by the GOI, but MC 4 applies because Applicant demonstrated a good faith willingness to comply with DoD policy.

The Government also expresses a security concern with regard to Applicant's conscripted military service in the Iranian army, and DC 3 applies. However, this service, occurring while Applicant was a citizen of Iran, is mitigated because Applicant was required to comply with the laws of Iran at the time, and MC 2 applies. Furthermore, Applicant voluntarily provided American intelligence sources first-hand information about the effects of Iraqi nerve gas upon him during his military service, and this valuable information justified an official grant of US permanent residency for Applicant and his brother.

Paragraph 2 (Guideline B - Foreign Influence). Applicant's wife is a German-born citizen whose parents live in Germany, and DC 1 applies. However, Applicant's wife has lived in the United States since her marriage to Applicant in 1991, and she has no foreign business or financial interests in Germany. For this reason, MC 5 applies. The parents of Applicant's wife are retired and live in Germany, but they are not employed by or connected with the government, and

neither they nor Applicant's wife are in a position to be exploited by a foreign power. MC 1 applies. Contacts between Applicant's wife and her parents are casual and infrequent, and MC 3 has application.

Applicant's widowed mother is 59 years old and disabled, and she is a permanent resident of the US. She lives most of the year with Applicant and his wife, although she returns to Iran a few months per year to visit her daughter. She is a modestly-educated, unemployed pensioner, and she has no connections with the Iranian government. Like Applicant's sister, his mother is not in a position to be exploited by a foreign power, and MC 2 applies as to Applicant's mother and sister.

When Applicant fled to Germany and later to the United States, he brought his younger brother with him and acted as his guardian. Each is registered for the draft, and they are willing to bear arms against any foreign enemy, including Iran, if necessary. Applicant and his brother are now American citizens, and the brother has successfully completed professional training and established a chiropractic practice. Applicant's brother testified convincingly he considers himself an American citizen with no dual loyalty to Iran. MC 1 applies.

As for the Applicant, he has established a commendable record of hard work and achievement in this country, and he has conducted himself as a model citizen. He is deeply appreciative of the individual freedom and personal opportunities afforded him in America. The evidence supports a conclusion that Applicant has no foreign preference and he is not subject to any foreign influence that might cause concern as to his security eligibility.

In reaching the above conclusions, I have also considered all factors of the whole person concept. On the basis of the entire record, I conclude Applicant brings himself favorably within each of these 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, 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.

Subparas. 2.a-2.e.: 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. See esp. Tr. 29-36. Witness is the company security officer, a former US Marine and a retired FBI agent. He describes Applicant's character as "above reproach."

2. " " " "