

DATE: February 25, 2003

In Re:

-----

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-01605

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Jonathan A. Beyer, Esquire, Department Counsel

**FOR APPLICANT**

Hoss Zand Karimi<sup>(1)</sup>

**SYNOPSIS**

Applicant's possession of an Iranian passport after becoming a U.S. citizen, with intent to retain and use the passport to visit family in Iran demonstrated a foreign preference and was not mitigated where Applicant had not surrendered the passport or obtained formal approval for its use at the time of the hearing. Applicant was potentially subject to foreign influence where her father, stepmother, four siblings, and in-laws--with whom she maintained regular contact--were all citizens of Iran, residing in Iran. Clearance denied.

**STATEMENT OF THE CASE**

On 18 October 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(2)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 11 November 2002, Applicant answered the SOR and requested a hearing. The case was originally assigned to a different Administrative Judge, but was reassigned to me on 8 January 2003 and received by me the same day. On 15 January 2003, I set the case for hearing and issued a Notice of Hearing (NOH) on 21 January 2003 for a hearing on 6 February 2003. On 30 January 2003, I amended the NOH to change the time of hearing when an earlier hearing was cancelled.

At the hearing, the government submitted 2 exhibits--admitted without objection--and no witnesses. The Applicant submitted one exhibit--also admitted without objection--and the testimony of three witnesses, including herself. DOHA received the transcript on 14 February

2003.

**RULINGS ON PROCEDURE**

At the hearing, Department Counsel asked me to take official notice of 1) the "Money Memorandum," 2) the U.S.

Department of State, Consular Information Sheet on Iran date 26 February 2002, 3) the Intelligence Threat Handbook, and 4) a 27 November 2002 Washington Times article "Face of U.S. Espionage Changing." I granted the request (Tr. 24).

## FINDINGS OF FACT

Applicant denied being a dual citizen of the U.S. and Iran, but admitted possessing an Iranian passport after her naturalization as a U.S. citizen in 1999. She also admitted that close family members still reside in Iran as Iranian citizens; accordingly I incorporate those admissions as findings of fact.

Applicant--a 40-year old employee of a defense contractor--seeks access to classified information.

Applicant was born in Teheran in 1962--making her a citizen of Iran, governed then by the Shah of Iran.<sup>(3)</sup> She was educated in Iran. She emigrated to the U.S. in 1987 to be with her husband, who had emigrated to the U.S. in 1974 to attend college, but had become a legal permanent resident. He returned to Iran in 1983 to marry Applicant. They resided together in Iran until 1985, when he returned to the U.S. It took him 18 months to obtain a Green Card for Applicant. She has resided in the U.S. since 1987 and has no intention of leaving the U.S. except for vacations and to visit family. She became a naturalized U.S. citizen in October 1999 (G.E. 1). Her husband became a U.S. citizen in 1990. Applicant has two daughters, both considered by Iran to be Iranian citizens. One was born in the U.S.; one was born in Iran. Both have Iranian passports.

On 15 March 2001, Applicant executed a Security Clearance Application (SCA)(SF-86)(G.E. 1), on which she truthfully disclosed her dual citizenship, foreign relatives, and possession of a foreign passport.

On 27 November 2001, Applicant described her dual citizenship and foreign travel to the Defense Security Service (DSS)(G.E. 2):

My mother is deceased and my father still resides in Iran. My father, stepmother, and four siblings are all citizen of Iran and still reside in Iran. My in-laws also reside in Iran and are Iranian citizens. I talk by telephone with my father and stepmother once a week to once every other week. I talk with my siblings one to two times a year. I do not have any property or financial interest in Iran. I expect to inherit something from my father when he passes away but I am not sure what that inheritance might consist of. **My only interest in Iran is my family that lives there.** I receive nothing from the Iran government and do not receive any benefits from being a citizen of Iran nor do I stand to receive any benefits in the future. When I became a US citizen in 1999 I considered myself no longer a citizen of Iran. However, **if I want to travel to Iran I have to have an Iranian Passport. Iran will not let me enter their country with my US passport. And the only reason I want to travel to Iran is to see my family.** If my family were in the US I would have no desire or reason to travel to Iran. Since living in the US (1987) I have visited Iran on 3 separate occasions, in 1990, 1995, and in the spring of 1999. **I renewed my Iran passport in 1999 just prior to going to Iran. I do not have another passport, other than the US passport. I would be willing to renounce my Iranian citizenship and be willing to relinquish my Iranian passport if necessary to get a security clearance. This is not something I want to do because I want to be able to visit my family in Iran. And until policy changes I need an Iran passport to travel to Iran. I have not taken any action to renounce my Iranian citizenship or relinquish my Iranian passport.** (Emphasis added.)

I have never served in the Iranian military or even worked for the Iranian government. I have never performed any type of service in lieu of a military service obligation. Other than being able to have an Iranian Passport, I have no rights, privileges, benefits, or obligation to the Iran government. I have not accepted or exercised any privileges, rights, or benefits as a citizen of Iran. I have not taken any action to fulfill Iranian Citizenship requirements, nor do I maintain dual citizenship to protect financial interest in Iran. I have never registered for military service or with a foreign office, embassy or consulate to obtain benefits. I have never voted in a foreign election and have never held office in a foreign country. My allegiance and loyalty lie with the US and the fact that I have family in Iran could not be used to pressure me to act against the best interest of the US.

Applicant possesses an Iranian passport issued in February 1999 (when Applicant was still a citizen only of Iran). This

passport does not expire until January 2004. Applicant used her Iranian passport to travel to Iran in June 1999 (again before her naturalization as a U.S. citizen). However, she retains the passport to facilitate future travel to Iran.

At the hearing, Applicant testified consistently with her sworn statement that she retains her Iranian passport because she wants to be able to travel to Iran to visit family. She is aware of the State Department warnings about the problems encountered by Iranian-American dual citizens who attempt to travel to Iran on U.S. passports. She would travel to Iran on a U.S. passport if it was realistically possible to do so. Although she has previously expressed a willingness to renounce her Iranian citizenship, she is not especially desirous of doing so, and has taken no action to begin the renunciation process. Her father is retired and none of her relatives in Iran are employed by the government or involved in companies doing business with the government. However, Iran is a country whose intelligence operations are known to target U.S. interests.

Applicant's supervisor considers her a good employee, professional, responsible, and dependable. Applicant has handled company proprietary information appropriately (Tr. 35-39). A co-worker shares the supervisor's favorable impression of Applicant (Tr. 42-46). Both witnesses were aware of the security issues presented by Applicant's dual citizenship.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FOREIGN PREFERENCE (CRITERION C)**

E2.A3.1.1 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship:

E2.A3.1.2.2. Possession and/or use of a foreign passport;

E2.A3.1.2.6. Using foreign citizenship to protect financial or business interests in another country;

E2.A.1.3. Conditions that could mitigate security concerns include:

None.

### **FOREIGN INFLUENCE (CRITERION B)**

E2.A2.1.1. 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 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in, a foreign country;

E2.A2.1.3. Conditions that could mitigate security concerns include:

None.

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C<sup>3</sup>I) issued a memorandum (the "Money memo") to clarify the application of Guideline C., Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, C<sup>3</sup>I memorandum **"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."** (Emphasis added).

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

A dual citizen of Iran and the United States since her naturalization in 1999, Applicant's Iranian citizenship possesses little security significance if based solely on her birth in a foreign country. For Applicant's conduct to fall within the security concerns of Criterion C, Foreign Preference, she must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the Government can seek to deny access under criterion C. The Government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign countries of which one is also a citizen in cases of dual citizenship. I conclude the Government has established its case under Criterion C.

Although Applicant claims to prefer her U.S. citizenship to her foreign citizenship, her conduct belies that assertion. Applicant testified she considered that she renounced her foreign citizenship when she took the oath of citizenship for the U.S. Certainly, her oath of allegiance to the U.S. and her rejection of allegiance to any foreign government in the citizenship oath is powerful evidence of a preference for U.S. citizenship. However, the citizenship oath does not automatically operate to terminate her citizenship rights in the country of her birth. Indeed, under Iranian law, Applicant's U.S. citizenship is null and void because she did not comply with the renunciation requirements of Iran. Nevertheless, the fact that she did not comply with the citizenship renunciation requirements of her native country--and thus is not considered by that country to have renounced that citizenship, or to have acquired U.S. citizenship--would ordinarily not affect the analysis of Applicant's preference. However, in this case Applicant reasserted her foreign citizenship and her preference for that citizenship when she applied for, received, and used her Iranian passport to travel there in June 1999. While she had not yet been naturalized as a U.S. citizen, she had applied for citizenship and was naturalized in October 1999. More important, although she has not used her Iranian passport to travel (to Iran or

anywhere else) since becoming a U.S. citizen, she retains her Iranian passport because she wants to visit family in Iran and she knows that she can only travel to Iran on an Iranian passport.

A citizen of any country, including the U.S., who travels to another country, submits to the sovereignty of that country, including application of the foreign state's laws regarding visits by foreign citizens. However, a citizen of the U.S. who travels abroad as a U.S. citizen only, travels with the knowledge that the U.S. government is available to provide diplomatic assistance if the traveler encounters difficulty while traveling abroad. A dual citizen of the U.S. and a foreign state who travels to that foreign state faces potential difficulty in obtaining U.S. diplomatic assistance because the foreign state may insist on treating the traveler as a citizen of the foreign state. The traveler faces still greater complications where the foreign state considers the traveler to be a citizen of only the foreign state. In this case, Applicant applied for a passport from Iran knowing that she could not travel to that country except as a citizen of that country. She knows that Iran does not recognize her U.S. citizenship and will not permit her to travel to Iran as a U.S. citizen. She voluntarily chose to apply for, and accept, the benefits of her foreign citizenship in preference to her pending U.S. citizenship. The fact the foreign passport was required for her to visit Iran--under Iranian law--does not obscure the fact the choice to travel to Iran was hers to make. The fact that choosing to not travel to Iran is a difficult choice to make does not make the choice to travel there as a citizen of that country any less voluntary. Nor is her decision to retain the Iranian passport any less voluntary.

Applicant meets none of the mitigating conditions (MC) for foreign preference. Her dual citizenship is not based merely on her birth in a foreign country, but on her active assertion of her citizenship rights in that country. Although her conduct is lawful, there is no evidence that the conduct was formally sanctioned by the United States. Applicant has expressed a conditional willingness to renounces her foreign citizenship which can be given little weight under the circumstances of this case, where she has indicated a clear reluctance to do so. She remains unwilling to renounce her foreign citizenship because she wishes to retain the ability to travel to Iran.

The ASD, C<sup>3</sup>I Memorandum only complicates matters for Applicant. The Memorandum states that Applicant's past possession and use of her Iranian passport can be mitigated only if she surrenders the passport or obtains U.S. Government approval for its use. She had not undertaken to surrender the passport, and formal approval for use of the passport for what amount to tourist reasons is not available to her. Further, her inaction on her offer to renounce her citizenship and her unwillingness to surrender her Iranian passport cast serious doubt on her fitness for access to classified information, and presents an unacceptable level of risk that she has a foreign preference. I resolve Guideline C against Applicant.

In a similar fashion, Applicant appears vulnerable to foreign influence. Applicant's father and other close relatives remain in Iran. She has frequent contact with them. Indeed, Applicant's intent to retain and exercise her Iranian citizenship--by keeping her Iranian passport--is rooted in her desire to be able to return to Iran and visit these relatives. Notwithstanding Applicant's representations that none of her family work for the Iranian government, the record contains insufficient information about her family members to conclude that they do not constitute an unacceptable security risk as required by MC 1, especially with regard to a country known to target U.S. interests. I resolve criterion B. against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Criterion C: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Paragraph 2. Criterion B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Applicant's husband, also listed in her clearance application as Hosseini Nassrolah Ravandi. The correct spelling of both Applicant and her husband's last name is "Zand Karimi," (Tr. 33).
2. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
3. Mohammad Reza Pahlavi became Shah in 1941, fled the country briefly in the early 1950s, but returned to power in 1953. In 1961, Iran initiated a series of economic, social, and administrative reforms--fueled by its vast petroleum reserves--that accelerated modernization and economic at an unprecedented rate. In 1978, religious and political opposition to the Shah (and his hated internal security and intelligence service) increased the level of domestic turmoil in Iran. In January 1979, the Shah fled, and in February 1979 revolution swept the country. The December 1979 constitution created a theocratic republic guided by Islamic principles. In November 1979, revolutionary "students" invaded the U.S. Embassy and took personnel there hostage, not releasing them until 1981. The U.S. severed diplomatic relations with Iran in April 1980.