

DATE: January 17, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04786

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's renewal of her foreign passport after her naturalization as a U.S. citizen--an active exercise of dual citizenship and an act demonstrating foreign preference--was mitigated where she never used the passport, renewed it primarily in anticipation of travel to Lebanon in support of a World Bank contract at a time when she had no clearance, and had effectively complied with the "Money Memo" before she became aware of its provisions (the passport had expired and she had lost it). Applicant's prospective foreign influence was mitigated where her contacts with her father were minimal and where there was nothing in her relationship with her father--including his property holdings and employment as a judge in Iran over 20 years ago--to suggest that she would be subject to pressure on his behalf. Clearance granted.

STATEMENT OF THE CASE

On 16 April 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⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 17 May 2002, Applicant answered the SOR and requested a hearing. The case was originally assigned to a different Administrative Judge, but was re-assigned to me on 2 July 2002, and received the same day. I issued a notice of hearing on 11 October 2002 for a hearing on 29 October 2002. However, on 18 October 2002 I granted Applicant's request for continuance because she was scheduled for significant surgery on 25 October 2002--a fact not known to me when I scheduled the hearing. On 21 October 2002, I issued a second notice of hearing for 11 December 2002, an available date within the period requested by Applicant.

At the hearing, the Government presented three exhibits--admitted without objection--and no witnesses; Applicant presented twelve exhibits--nine admitted without objection, three admitted over objection--and the testimony of two witnesses, including herself. DOHA received the transcript on 19 December 2002.

PROCEDURAL ISSUES

On 18 October 2002, I granted Applicant's request for continuance for the reasons stated above, to which Department Counsel had no objection.

At the hearing, Department Counsel asked me to take official notice of the Consular Information Sheet on Iran.⁽²⁾ I granted the request (Tr. 37-40). I also indicated that I would take official notice of the political events that occurred in Iran between 1978 and 1980 (Tr. 169) and provisions of the Iranian constitution regarding citizenship (Tr. 223-226).

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for the allegations of subparagraph 1.a.; accordingly I incorporate those admissions as findings of fact.

Applicant--the 37-year old president of her own software firm since 1989--seeks access to a higher level of classified information. She obtained her first clearance in April 1996, on essentially the same facts as alleged in the current SOR.⁽³⁾ Applicant requires a clearance for her company to have a clearance. The actual work performed on the classified contracts, current and projected, is performed on-site at the user agency by cleared company employees. Applicant does not have day-to-day access to the classified information.

Applicant--an ethnic Persian--was born in Teheran in 1965, making her a citizen of Iran, governed then by the Shah of Iran.⁽⁴⁾ The Iran into which Applicant was born was pro-western, but not a democracy, and Applicant experienced the benefits of growing up in a westernized culture: she was educated in English-language schools,⁽⁵⁾ was exposed to western political thought, and wore western clothing. Her family was wealthy. Her father was a senior judge when he retired in approximately 1979. Her mother worked in the Iranian defense ministry before leaving Iran in 1980. Applicant's older brothers had come to the United States to attend college and stayed.

Applicant expected to follow her brother's footsteps and travel to the U.S. to attend college. However, that plan was overtaken by events.⁽⁶⁾ She was unable to obtain a student visa to the U.S. in 1980. Instead, she traveled to an American school in Madrid, accompanied by her parents. Her mother left her job in the Iranian defense ministry. Her father had already retired from his judgeship at about the time of the revolution (or slightly before), although he was apparently eligible to stay on.

In 1981, with the help of an American friend of the family (who the family had helped get out of Iran after the revolution), Applicant and her mother obtained visas to come to the U.S. Applicant traveled to the U.S. from Spain. Her mother returned to Iran briefly to wrap up her family affairs before emigrating to the U.S. Applicant's father was unable to obtain a visa. He returned to Iran, where he has resided since.⁽⁷⁾

Applicant came to live with one of her relatives in the U.S. She attended a major state university from January 1982 to December 1986, obtaining a bachelor's of science degree. She has never been back to Iran. She converted to Christianity in 1983 or 1984. She became a naturalized U.S. citizen in February 1990. Her most recent U. S. passport was issued in October 2000.

Although Applicant emigrated to the U.S. on an Iranian passport in 1980, and as a non-citizen was required to maintain a valid Iranian passport, she never used the Iranian passport to travel, even before becoming a U.S. citizen. Instead, she used a U.S.-issued travel document (not a passport) before becoming a U.S. citizen (Tr. 61).

Applicant's last Iranian passport (G.E. 3) was issued in April 1989--before she became a U.S. citizen--and expired in April 1992. However, Applicant had the passport extended in September 1993. When Applicant obtained the extension of her Iranian passport, her company had obtained a contract with the World Bank/United Nations to provide software services in developing nations. Applicant anticipated traveling to Lebanon in support of the contract. However, she knew from consulting with both State Department and Commerce Department officials, as well as the State Department web site, that it would be unwise for her to travel to Lebanon on her U.S. passport. State and Commerce officials recommended she use another passport if one was available to her. Applicant followed that advice and extended her passport in contemplation of traveling to Lebanon. She also contemplated traveling to Iran to see her father, who had

recently been diagnosed with prostate cancer and was undergoing treatment. Neither trip materialized. The trip to Lebanon was scrapped when the time line for action on the contract was changed. Applicant also concluded the risks to her in traveling to either Lebanon or Iran, even on an Iranian passport, were too high. Applicant's passport extension expired in April 1995. She lost the passport and was able to provide a copy to the agent conducting her investigation in 2001 only because she had kept a photocopy for her records.

Applicant's mother (who was 18 years younger than Applicant's father) emigrated to the U.S. shortly after Applicant. She also converted to Christianity in 1983 or 1984. She became a naturalized U.S. citizen in 1997. She has not been back to Iran since emigrating to the U.S., not even for her father's (Applicant's grandfather, a retired air force general) funeral.

Applicant's father retired from the judiciary around the time of the 1979 revolution, at about age 57. Although Applicant disputes that he held the equivalent position of a U.S. Supreme Court Justice--or was directly appointed by the Shah--that characterization is less important than her acknowledgment that he was a very senior judge in the Iranian government before the revolution. If he did not "flee" to Spain in 1980 with Applicant and her mother, it is fair to say that he prudently took his remaining family to Spain, until he could get a clearer sense of the life in post-revolutionary Iran. When he returned to Iran, he was questioned by Iranian authorities (again it does not matter whether he was actually detained). However, he has been allowed to travel without apparent restrictions, and visited Applicant in the U.S. At one time, he had significant property holdings in Iran, but Applicant no longer knows either the number of properties or their value. She has little current contact with him. He is now 81 years old.

Applicant has consistently indicated a willingness to renounce her Iranian citizenship. Although she does not consider herself a citizen of Iran, she recognizes that Iran considers her to be a citizen. She had not taken any steps to renounce her citizenship before leaving Iran. In the wake of her SOR, she contacted the Iranian Interests Section in the Pakistani Embassy, but was told she would have to re-apply for an Iranian passport (i.e. re-assert her Iranian citizenship) before she could apply to renounce her citizenship). Applicant prudently declined this option.

Applicant believes that she may not safely travel to Iran because she is a Christian (and Iran persecutes non-Muslim minorities) and a westernized woman (and Iran is a fundamentalist Islamic nation). She also believes that as a Christian she could not inherit any of her father's property, is unlikely to be named an heir given the distance in their relationship, and in any event could not travel to Iran to assert her claim to the property.

Applicant's contracts manager considers her a wonderful employer, an effective leader of an aggressive but honest company. She does not believe Applicant has much contact with her father.

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 6.3. 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 (GUIDELINE 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.A.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.3. Activity is sanctioned by the United States;

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

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:

E2.A2.1.3.1. A determination that the immediate family member(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.

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C³I) issued a memorandum(the "Money emo") 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, C³I 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 SOR. 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 U.S. Government that is 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

Although Applicant has been a dual citizen of Iran and the United States since her naturalization in 1990, her foreign

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 Guideline 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 Guideline 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 country of which they may also be a citizen. Under this assessment, I conclude the Government has established its case under Guideline C. Nevertheless, I conclude that Applicant has mitigated the security concerns.

Applicant convincingly asserts that she prefers her U.S. citizenship. The single instance of conduct to the contrary--extending her Iranian passport in September 1993--is mitigated by a number of factors. First, she renewed her passport principally for a business trip to a third country. Although the extension was not formally sanctioned by the U.S. in a manner contemplated by the guidelines, Applicant nevertheless consulted with State and Commerce Department officials (as opposed to simply consulting the State Department travelers web site), who recommended that she travel to Lebanon on her Iranian, not U.S. passport. One of the principal missions of both State and Commerce Departments is assisting U.S. businesses to operate overseas. Applicant--who did not have a clearance when she was working on the World Bank contract--reasonably relied on that recommendation. She is still responsible for the fact that she reasserted her right to an Iranian passport, but under these circumstances, the conduct loses much of its security significance.

Second, she never actually used the passport; even before becoming a U.S. citizen, she apparently used a U.S. travel document. Third, even without being aware of the specifics of the "Money Memo," she was willing to surrender the passport, now expired. She is unable to surrender the passport, because she lost it (and the government did not invoke the "Money Memo" as an issue in this case). Finally, she is willing to renounce her Iranian citizenship, and took steps to explore the procedures to do so, but was unwilling to re-apply for a passport to demonstrate that she was an Iranian citizen who could then apply for renunciation.

Applicant has lived in the U.S. since 1981, and has been a citizen since 1990. She has never been back to Iran. Her significant contacts are here. Except for her father, all her family members are here. Her employment and property are in the U.S. She has no property or financial interests in Iran. Her national preference seems overwhelmingly for the U.S. On the identical facts relevant to foreign preference (and identical guidelines save the "Money Memo," which is not applicable) Applicant was properly granted her clearance in 1996 as an administrative matter. That decision does not bind me, both because the government may revisit any clearance decision when new facts suggest a review is appropriate and because Applicant's higher level of access warrants a new assessment of her eligibility. Nevertheless, re-evaluation of the foreign preference issues examined in 1996 lead me to the same conclusion. While Applicant's renewal of her Iranian passport undercut her preference for the U.S., she has effectively reasserted her willingness to abandon her Iranian citizenship by attempting to renounce it. In addition, I found her testimony that she considers herself a citizen of the U.S. only to be credible. Accordingly, I resolve Guideline C for Applicant.

In a similar fashion, the Government has established its case under Guideline B., but I consider the security concerns mitigated. Applicant's mother worked for the Iranian defense ministry more than 20 years ago, under a government that no longer exists. She emigrated to the U.S. over 20 years ago and became a U.S. citizen in 1997. She has not traveled to Iran since leaving in 1981, and as a convert to Christianity would take significant risks in doing so. There is no likely scenario where the mother's past employment in the defense ministry would subject Applicant to foreign influence.

Applicant's father presents a similar initial question. His residence in Iran was known to the government when Applicant's obtained her initial clearance in 1996, and considered mitigated under the foreign influence guidelines in effect then (which remain essentially unchanged). As with the issue of foreign preference, that earlier adjudication does not bind me in this case, but I may still give it appropriate weight in assessing the new information about the father's past employment and property holdings. The father's employment as a judge under the Shah certainly increases the potential for him to be subject to pressure from the current government. The fact that the current government has not done so to date is no guarantee that it will not do so in the future. Nevertheless, it seems to me that the Iranian government has lost whatever leverage it might have had with Applicant's father in terms of influencing Applicant's behavior. Her ties of affection with her father were much stronger when she first emigrated to the U.S. and he returned to Iran, unsure of the reception he might receive. She appears to have seen him on few occasions in the intervening years, has little current contact with him, and has never returned to Iran to see him, despite his cancer in the early 1990s.

As a potential target for retaliation by the revolutionary government that swept the Shah out of power, Applicant's father was riper 20-plus years ago, when the excesses of the Pahlavi regime had not been replaced by the excess of a theocratic Islamic republic. It is possible, but not likely, that some Dickensian voice from the past may come forward now to denounce the father, but to what point? He is 81, his cancer in remission, but still an issue. Applicant was unwilling to travel to Iran to see him over ten years ago, when they were closer and the medical danger more immediate. She seems unlikely to be influenced to act against U.S. interests on his behalf. She also seems unlike to inherit any of his property upon his death, property with unknown value at this point. Certainly, this prospect plays no part in Applicant's thinking about the future. She is a successful business person in the U.S., who culturally, socially, economically, and politically has little connection with Iran. I resolve Guideline B for the Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Paragraph 2. Criterion B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. See, U.S. Department of State, Bureau of Consular Affairs, Consular Information Sheet, Iran dated 26 February 2002 (www.state.gov).
3. No SOR was issued before the 1996 clearance was granted, but the information known to the government then corresponds to the allegations in Paragraph 1 and subparagraph 2.a. The information in subparagraphs 2.b.-f. was developed during the background investigation for the upgraded access. It does not appear that Applicant was asked about these issues during her first investigation. In addition, the new information was apparently not considered by DSS to have sufficient security interest to be included in Applicant's sworn statement. G.E. 2 contains information essentially identical to that contained in her first sworn statement, taken as part of her first investigation (Tr. 200-213, Appellate Exhibit 1).
4. 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.

5. Applicant's native language is English, which she speaks fluently. She studied Farsi in school, as a foreign language, and speaks what might fairly be described as "kitchen Farsi."

6. 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.

7. Much of Applicant's documentary evidence consists of her side-by-side amendments of her sworn statement, answer, and affidavit in support of the answer. Much of her testimony involved her addressing concerns expressed by Department Counsel and me about retreating from what appeared to be a more favorable description of the circumstances of Applicant's traveling to the U.S., ie., that she and her mother more or less fled Iran in the wake of the revolution and never went back, and her father was detained by Iranian authorities upon his return to Iran. Her amendments paint a less draconian picture of the events. Initially, I was concerned about the effect of these revisions on her credibility. However, after observing her during the hearing and asking my own questions, I concluded that she was essentially truthful in her testimony, even if some of her characterizations of events were not entirely credible in view of the larger events of the time. Applicant might fairly be described as an intense individual who gets excited about issues that are important to her.