

DATE: November 14, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06068

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 43-year-old software engineer, who came to the U.S. from Iran at age 17, graduated from college, began a family, and embarked on a career that has benefitted U.S. security and defense interests. He has surrendered his Iranian passport and renounced his Iranian citizenship. His few remaining family ties to Iran are far outweighed by his connections with American society. Applicant credibly avers he would immediately report any improper contacts. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On February 6, 2003, 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 February 25, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made without a hearing. On May 7, 2003, Applicant submitted a request

stating that he had changed his mind and did want a hearing before a DOHA Administrative Judge. The matter was assigned to me on that date, May 7, 2003. A Notice of Hearing was issued on May 21, 2003, and the hearing was conducted on June 17, 2003. At the hearing, Applicant testified, called two other witnesses, and offered 13 exhibits, which were marked and admitted as Applicant's Exhibits (AX) A-M. The Government did not call any witnesses, but

offered three exhibits, which were marked and admitted as Government Exhibits (GX) 1, 2, and 3. Applicant timely submitted two post hearing exhibits, which were marked and admitted as AX N and AX O. The transcript (Tr) was received at DOHA on June 1, 2003.

FINDINGS OF FACT

Applicant is a 43-year-old consultant. The SOR contains two allegations, 1.a. and 1.b., under Guideline C (Foreign Preference) in the Directive, both of which Applicant admits; and three allegations under Guideline B (Foreign Influence), all of which Applicant also admits. The admissions are incorporated herein and are deemed findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Guideline C (Foreign Preference)

1.a. - Applicant *is not* a dual citizen of Iran and the United States.

1.b. - Applicant does not possess a valid Iranian passport. The Iranian passport he did have was issued to him on September 16, 1999; after he became a naturalized U.S. citizen on September 6, 1996. Applicant obtained the Iranian passport for the purpose of becoming eligible to sign a legal document so that his mother could sell and use the profits from some inherited property in Iran in which Applicant had a legal claim if he wished to exercise it. Applicant did not use the Iranian passport for any other purpose. In addition, Applicant has documented that he *has surrendered* his Iranian passport by cutting it into pieces and mailing it to the Iranian Interests Section of the Pakistani Embassy. (AX A, AX B). He has not traveled to Iran since becoming a U.S. citizen in 1996, and he has no wish to do so.

In his response to the SOR, Applicant stated his willingness to renounce his Iranian citizenship. On June 24, 2003, Applicant *did renounce* his Iranian citizenship, by submitting a document to that effect to the Iranian Interests Section of the Pakistani Embassy, announcing his renunciation and asking for the appropriate forms to begin the process. (AX L).

Guideline B (Foreign Influence)

2.a. - Applicant's wife is a citizen of Mexico and resides in the U.S. She is a lawful permanent resident. (AX J). They have three children who are U.S. citizens. She is planning to apply for U.S. citizenship in 2004 (AX J).

2.b. - Applicant's mother became a naturalized citizen of the U.S. on January 31, 2003, and now resides in the U.S. (AX C, AX D);

2.c. - Applicant's two brothers are citizens and residents of Iran. Since Applicant's mother became a naturalized U.S. citizen in 2003, she has filed petitions with the Immigration and Naturalization Service (INS) to bring Applicant's brothers to the U.S. (AX E, AX F, AX G, AX H). Both brothers wish to become lawful residents of the U.S. and, eventually, U.S. citizens.

Applicant is highly thought of by his employer. (AX K). He has had a highly productive 16-year career in software engineering. (AX L). In September 2002, Applicant reported to the FBI information about an Internet site calling for an end to any cooperation with the U.S. He learned about the website through an e-mail from a brother in Iran, who suggested Applicant inform U.S. officials. Applicant did so, and the FBI responded with a "thank you" message. (AX M).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing 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, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

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

GUIDELINE B (Foreign Influence)

Condition that could raise a security concern and may be disqualifying:

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 or present in, a foreign country.

Condition that could mitigate security concerns include:

1. A determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk.

GUIDELINE C (Foreign Preference)

Conditions that could raise a security concern and may be disqualifying:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns include:

1. Dual citizenship is based solely on parents' citizenship or by birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant was born in Tehran, Iran in 1960. He came to the U.S. in February 1979, at age 17, on a student visa, and has lived here since that time, except for a one-year stay in Iran in 1993-1994. He returned to Iran in 1993 to visit family

and to consider an offer from a brother to work with him in the television industry in that country. While he was there, he was drafted into the Iranian Army, but was able to buy his way out of serving for \$3,000. He was unhappy with what he saw in Iran and returned to the U.S., with the intent to make this country his permanent home. He has not visited Iran since that time. Applicant applied for U.S. citizenship in 1994 and was naturalized in 1996. (Tr at 38). He understood when he took the oath of allegiance that he was renouncing his Iranian citizenship. (Tr at 39).

In 1998 or 1999, Applicant renewed his Iranian passport so that he could legally sign away his rights to an inherited piece of real property so that his mother could obtain the full proceeds from its sale. This could only be done if he had an Iranian passport. (Tr at 39, 42, 43). He did not use it for any other purpose and he retained it only because he did not think of it as something he needed to destroy. (Tr at 40, 41). He has now destroyed the passport and returned it to the Iranian Interests section of the Pakistani Embassy, but has not received any communication in response. (Tr at 41). He followed through on his stated willingness to renounce his Iranian citizenship by sending a letter to that effect to the Iranian Interest Section at the Pakistani Embassy. (Tr at 42).

Applicant's sole remaining tie to Iran is the presence there of his two brothers, both of whom are now in the process of emigrating to the U.S. (Tr at 49, 50). His mother is now residing in the U.S. and became a naturalized citizen in January 2003. (Tr at 51). None of his family plan any travel to Iran in the foreseeable future. (Tr at 52). Applicant corresponds with his brothers by e-mail every couple of weeks, and he looks forward to the time when they will all be reunited in the U.S. (Tr at 52, 53). None of his relatives in Iran know what he does for a living or that he is applying for a security clearance. (Tr at 54). Applicant's wife, who is a Mexican citizen, is in the process of becoming a U.S. citizen on 2004. (Tr at 54). Applicant discussed what he would do if asked to disclose classified information or do anything against U.S. interests. He has strong feelings against the regime in Iran and would report any improper contacts. (Tr at 55-57).

In 2002, he acted in support of U.S. interests when he reported to the FBI an anti-American e-mail message he observed on the Internet. (Tr at 56, 57 and AX O). One of his brothers in Iran actually informed Applicant of the message and suggested he inform U.S. authorities. (Tr at 57). Applicant has made his life here, has raised his children as Americans, and considers himself to be an American as well. His two witnesses, from work, speak very highly of him and his contributions to the company and the U.S. defense effort. The second witness is the Facility Security Officer, and believes Applicant is eligible for access to the nation's secrets. (Tr at 62-70). There is nothing in the record indicating he has ever had any problems relating to classified or proprietary information.

Guideline B - The concerns stated in the SOR are cited under Guideline B and are based on the risk of foreign influence. The presence of an applicant's relatives who are citizens of and/or resident in a foreign country is certainly a matter of security concern. Just as clearly, however, not all foreign countries create the same level of risk. In the present case, I take official notice that Iran is considered by the U.S. government to have a regime unfriendly to U.S. interests.

It is not clear how anyone with relatives in a foreign country, whether a naturalized citizen or not, can establish with any certainty that the relatives are not in a position to be exploited by the foreign government. The lack of any such effort in the past is a positive factor, but does not necessarily mean that there will be no such effort in the future. In Applicant's case, there is probably less likelihood than in the past, if only because all of Applicant's family members are already in the U.S. or in the process of coming here. I have considered this point in the context of the overall record, which includes Applicant's testimony about the nature of his relationship and contacts with his brothers in Iran, their lack on contact with the government of Iran, and Applicant's clear statement as to what he would do if asked to disclose classified information. Based on the totality of the record, I conclude that Applicant is sincere in his commitment to the U.S. and that he would respond to any contacts against those interests by promptly informing the FBI.

While the language in Disqualifying Condition (DC) 1 indicates that the presence of close family in a foreign country is of concern, that concern can be mitigated by evidence that the risk of pressure being applied is not unacceptable *and* that the applicant is not likely to feel "forced to choose between loyalty to the persons involved and the United States."

There is always a chance that Applicant might be asked to act improperly in the future, even though he not been asked to do so in the past. Although this is a reality, it is also speculative since there is no direct or indirect evidence that it has occurred, or is likely to occur. I find the risk that he would be asked to act improperly to be minimal. Even more importantly, I conclude he would act immediately to report the contact and not feel that he was being *forced* to choose

between his relatives and his country. As to Mitigating Condition (MC) 1, and based on all of the available evidence, I have determined that the family members in question do not constitute an unacceptable security risk. As to MC 3, I conclude that Applicant's contacts and correspondence with his brothers, although not casual and infrequent, is of minimum security significance. The mitigating evidence substantially outweighs the evidence supporting the SOR.

I am concerned about the foreign country in this case being Iran, but based on the overall record, including the fact that Applicant's two brothers, his sole remaining ties to that country, are now in the process of becoming legal immigrants to the U.S., leads me to conclude that the risk of their being asked to contact Applicant for an improper purpose is minimal. I have considered the guidance provided in a recent Appeal Board Decision and Reversal Order in ISCR Case No. 02-26826 (November 12, 2003). In that case, a finding that an applicant's family in a foreign country "were not in a position to be exploited [was] problematic in light of the overall record . . .," which included evidence that the family included a father who had been until recently a high-ranking officer, with powerful connections, in that country's army. In the present case, Applicant's two brothers have no similar connections and are, in fact, seeking to join Applicant and their mother in the U.S. Another factor noted in the Appeal Board Decision is the extent and nature of their communications. Applicant's e-mail contacts with one brother about "every other week"(Tr at 53) are not casual or infrequent (MC 3), but that seems less of a negative factor when considered in the context of their seeking to leave that country for the U.S.

Overall, Applicant's explanations as to his relationships, the lack of any problems in the past, and his clear recognition of his security responsibilities, lead me to conclude that there is minimal risk of Applicant acting against U.S. interests. In summary, Applicant has demonstrated by the way he has led his life that he considers himself to be an American and committed to U.S. interests.

"An applicant's stated intention about what he or she might do in the future under some hypothetical set of circumstances is merely a statement of intention that is not entitled to much weight, unless there is record evidence that the applicant has acted in an identical or similar manner in the past under identical or similar circumstances." (ISCR Case No. 02-26826, supra, at page 5). I conclude that in the present case, Applicant's conduct in contacting the FBI in 2002, as discussed above, means that his statement as to intended future action to be entitled to considerable weight, viewed in the context of the overall record, including his long history of contributing to American society.

Guideline C (Foreign Preference)

Applicant did exercise his dual citizenship by obtaining an Iranian passport after becoming a U.S. citizen (Disqualifying Condition (DC) 1), but used it only once, to help his mother obtain a family inheritance, not for his own convenience or profit and clearly not indicative of a preference for Iran. Applicant did obtain and possess an Iranian passport (DC 2), as described above, but has now surrendered it and renounced his Iranian citizenship. (MC 4). DC 3 is not applicable since Applicant did not show a willingness to bear arms for Iran after becoming a U.S. citizen.

Overall, the record shows that Applicant's words and conduct demonstrate an unequivocal preference for the U.S. and a clear understanding of his obligations to protect U.S. security interests.

I conclude there is minimal risk that he would ever disclose classified information to unauthorized individuals. In his life, he has demonstrated that he possesses the integrity, good 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 B (Foreign Influence) For the Applicant

Subparagraph 1.a.. For the Applicant

Subparagraph 1.b. For the Applicant

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

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