

DATE: April 15, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-08368

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has expressed a willingness to renounce his Iranian citizenship, but does not want to relinquish his Iranian passport for personal reasons. He has failed to comply with the provisions of the Money Memorandum, and does not fall within the Government's exception. He has no significant family ties or foreign contacts in Iran that could raise a security concern. Clearance is denied.

**STATEMENT OF THE CASE**

On June 25, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR on July 29, 2003, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 29, 2004. A notice of hearing was issued on February 3, 2004, scheduling the hearing for March 2, 2004. At the hearing the Government presented six exhibits. The Applicant presented one exhibit and testified on his own behalf. The official transcript (Tr.) was received on March 15, 2004.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 51 years of age and married. He is employed as a Software Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is

ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of Iran and the United States. He was born and raised in Iran. He left Iran in 1976, went to England for a year, and then came to the United States in 1977. He became a naturalized citizen in 1994. After obtaining his United States citizenship, he maintained an Iranian passport that was issued to him in June 2001. He has used his Iranian passport for purposes of travel to enter Iran on two occasions. His Iranian passport currently expires in 2006. The Applicant remains in possession of his Iranian passport and would like to keep it for personal reasons.

Prior to the hearing, the Applicant received a copy of the Money Memorandum dated August 16, 2000. (*See* Government Exhibit 1). He is aware of its provisions, and states that his circumstances fall within one of the exceptions to the policy. He and his wife have been married for twelve years and have been unable to conceive children. He believes that their only chance to have children is through "in vitro fertilization," a procedure which they could get in Iran for much less money than the cost in the United States. (Tr. p. 20). He and his wife hope to travel to Iran very soon for a medical work up for this purpose. He maintains the Iranian passport for this reason alone.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's mother, and two of his three sisters, are residents and citizens of the United States. His other sister has recently been granted asylum and is residing in the United States. His mother-in-law is a United States resident and lives with the Applicant. The Applicant has no family or other associations in Iran.

The Applicant indicates that his father, who died in 1994, was a Colonel in the Shah's Army and was put under constant pressure and stress by Islamic guards which led to his heart attack and death while under house arrest. The Applicant's youngest sister was also detained, interrogated and intimidated by Islamic guards on several occasions before she managed to leave Iran and was granted political asylum in the United States in 2001.

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Preference

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.

#### Condition that could raise a security concern:

1. The exercise of dual citizenship.

#### Conditions that could mitigate security concerns:

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

## Foreign Influence

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or he 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 potentially vulnerable to coercion, exploitation, or pressure.

### Condition that could raise a security concern:

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

### Conditions that could mitigate security concerns:

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. Contact and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as

to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

### **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR. However, the Applicant's foreign preference and contacts have been mitigated and do not have a direct or negative impact on her suitability for access to classified information.

The Applicant is a dual citizen of Iran and the United States. He says that he has renounced his Iranian citizenship, but this is not the case as long as he retains his Iranian passport. He has failed to comply with the provisions of the Money Memorandum and clearly does not fall within any of the exceptions to the policy. His explanation does not fit within either of the provisions. There is no discretion to go beyond the language of the stated exceptions. While his reasoning is understandable, he has not demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against the Applicant under Guideline C (Foreign Preference).

With respect to Guideline B, the Applicant has no immediate family members who reside in Iran. All of his family has moved to the United States to make it their permanent home. The possibility of foreign influence that could create the potential for influence and that could result in the compromise of classified information does not exist. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline C.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant 1.b.: Against the Applicant 1.c.: Against the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

Subparas. 2.b.: For the Applicant

**DECISION**

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

Darlene Lokey Anderson

Administrative Judge