

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant sought a copy of his Iranian birth certificate. The Iranian government would not issue that copy unless Applicant supplied an official document showing his birth date. The only such document Applicant had was his expired Iranian passport. Applicant paid the \$300 fee, sent the passport which the Iranian government renewed, and Applicant then received his birth certificate from Iran. Applicant has not surrendered that passport. Applicant's mother and one sister own property in Iran which they are trying to sell. His mother is a U.S. citizen, his sister a permanent resident, and both live at least six months in Iran trying to sell that property. Applicant did not mitigate the foreign preference security concern. He did mitigate the foreign influence security concern. Clearance is denied.

CASENO: 02-28412.h1

DATE: 07/20/2004

DATE: July 20, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28412

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant sought a copy of his Iranian birth certificate. The Iranian government would not issue that copy unless Applicant supplied an official document showing his birth date. The only such document Applicant had was his expired Iranian passport. Applicant paid the \$300 fee, sent the passport which the Iranian government renewed, and Applicant then received his birth certificate from Iran. Applicant has not surrendered that passport. Applicant's mother and one sister own property in Iran which they are trying to sell. His mother is a U.S. citizen, his sister a permanent resident, and both live at least six months in Iran trying to sell that property. Applicant did not mitigate the foreign preference security concern. He did mitigate the foreign influence security concern. Clearance is denied.

STATEMENT OF THE CASE

On October 28, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personnel security Guideline C (Foreign Preference) and Guideline B (Foreign Influence) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated November 17, 2003, Applicant responded to the SOR allegations. On March 2, 2004, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM within the scheduled due date of April 14, 2004. . The case was assigned to me on April 26, 2004.

FINDINGS OF FACT

Applicant denied the allegations in Paragraph 1 of the SOR. Applicant admitted the allegations in Paragraph 2 of the SOR. Those admissions are incorporated herein as 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:

Applicant is 47 years old and was born in Iran. He is married, has two children born in the United States (U.S.) and works for a defense contractor. He immigrated to the U.S. and became a U.S. citizen in 1995. He does not consider himself a dual citizen, but he is willing renounce any vestiges of Iranian citizenship and surrender his expired Iranian passport. His wife is a naturalized U.S. citizen. One of Applicant's sister is a permanent U.S. resident who has real estate in Iran. Applicant has three sisters, two of whom are naturalized U.S. citizens. His mother is a naturalized U.S. citizen, who has real estate in Iran. Applicant's sister and his mother are trying to sell their land and remain in the U.S. At present, to manage her property, an apartment house, his sister lives in Iran with her 65-year-old husband. Applicant's mother spends about half a year in Iran because she is trying to sell a fruit orchard she owns. As of July 2002, she had found a buyer. She has had the fruit orchard on the market for the past four years. Applicant's father is deceased. (Exhibit 4 at 3 and 4, Exhibit 5)

Applicant sought to obtain a copy of his birth certificate from Iran. That government, through the Iranian Interest Section in the Pakistani Embassy in Washington, D.C., told Applicant in 1996 it needed some document showing his Iranian birth. The only document Applicant had was his expired Iranian passport. That passport expired sometime before 1996 and had not been renewed by Applicant. Applicant obtained a U.S. passport when he became a U.S. citizen. The Iranian Interest Section renewed the expired Iranian passport that Applicant sent with his application for a copy of his birth certificate, charged Applicant a \$300 fee, sent both to Iran, and Applicant obtained a copy of his birth certificate in the return mail. That passport was valid from January 1, 1996, to July 31, 2001. This passport states that Applicant's domicile was changed from Iran to the U.S. It has not been renewed. Applicant did not use this passport for travel to any where in the world, including Iran. Applicant did not apply for a new Iranian passport, nor did he want it. Applicant immigrated to the U.S. in 1974 at the age of 17 to attend college. Applicant's last visit to Iran was in September 1976, before the present Iranian government was installed or even contemplated. (Exhibit 3, Exhibit 4 at 6, Exhibit 5 at 1 and 2, Exhibit 6 at 5, Exhibit 8 at 12)

Iran and the U.S. have strained diplomatic relations. The U.S. State Department has issued a travel warning to U.S. citizens contemplating travel to Iran. (Exhibits 7 and 8)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* At 527. The president has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of 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. Directive ¶ E2.A3 .1.1.

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

The exercise of dual citizenship. Directive ¶ E2.A3.1.2.1.

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

Conditions that could mitigate security concerns include: E2.A3.1.3.

Dual citizenship is based solely on parents' citizenship or birth in a foreign country. Directive ¶ E2.A3.1.3.1.

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

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. Directive ¶ E2.A2.1.1.

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

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. Directive ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

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. Directive ¶ E2.A2.1.3.1.

Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. Directive ¶ E2.A2.1.3.5.

The memorandum dated August 16, 2000, signed by Assistant Secretary of Defense Arthur L. Money (Money Memo), is additional guidance regarding "the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The memorandum requires the current possession or use of a foreign passport, and that fact may be a disqualifying condition. (Exhibit 9)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Considering Guideline C, the Government has clearly shown that Applicant has an expired Iranian passport. That passport expired three years ago. Disqualifying Conditions (DC) 1 and 2 apply.

Mitigating Conditions (MC) 1 and 4 apply. Joined to those MC are the facts that Applicant did not renew his previous Iranian passport, but the Iranian government did so because it required such a document for Applicant to obtain a copy of his Iranian birth certificate. Applicant only wanted the birth certificate, but he had to pay a \$300 fee as demanded by the Iranian government when it renewed the passport. Applicant had no intent or desire to renew that passport, so he did not exercise dual citizenship, he merely applied for a birth certificate. Nor did Applicant renew the passport to travel to Iran or anywhere else. Applicant has not been in Iran for 28 years. This forcibly renewed passport expired in 2001. Its expiration means it is no longer effective. Applicant stated he would not renew it, would surrender it even though it is expired, and is willing to renounce any dual citizenship he may have with Iran, though he thought he had none since becoming a U.S. citizen. However, I think the Money Memo applies to this situation because Applicant could renew the expired passport and has not surrendered it in accordance with the requirements of the Money Memo. Applicant obtained an Iranian passport while a U.S. citizen, used it to obtain an Iranian birth certificate, and these actions constitute the "possession and/or use of a foreign passport" as defined by Guideline C and the Money memo. The use of the Iranian passport to obtain an Iranian birth certificate is related to Applicant's personal convenience, as defined in the Money Memo. The Money Memo further states "consistent application of the guideline requires 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." Applicant submitted no evidence that he surrendered the Iranian passport, even though it expired, or had official approval for the use of the Iranian passport (ISCR Case No. 01-24306, September 30, 2003). Therefore, I conclude Guideline C against Applicant.

Regarding Guideline B, the applicable DC is 1 (close relatives are citizens of a foreign country, or are resident in a foreign country). Applicant's sister lives in Iran, though she has permanent U.S. residency. Applicant's mother spent six months in Iran trying to sell her fruit orchard. Applicant's sister is trying to sell her real estate interests in Iran so she can immigrate to the U.S. Applicant's mother and sister are not agents or employees of the Iranian government, and are not subject to exploitation or coercion by the Iranian government. Applicant's two family members have not been bothered, coerced, pressured, or detained by the Iranian government to date. As of today, his mother's fruit orchard may be sold and she lives in the U.S. all the time, but Applicant did not respond to the FORM, so the current status of anything is unknown. Applicant's one sister wanted to sell her property in Iran and move full-time to the U.S. Applicant's interests in his sister's and mother's real estate is non-existent or very minimal. He certainly has no interest in his sister's real estate. He would only inherit a one-quarter interest, at least, in the fruit orchard. Applicant has not been in Iran since 1976, did not serve in the Iranian military, and would have to do so or buy his way out of that commitment, so Applicant has no incentive or purpose to submit to any coercion by that government if it pressured his sister. He knows he would slip into a deep vortex if he succumbed to any pressure, because all his assets and family except for the one sister are now in the U.S. Applicant would not want to lose all that for one apartment house owned by his sister. Therefore, I conclude Guideline B for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2 Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

DECISION

In light of all the circumstances and facts 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. Clearance is denied.

Philip S. Howe

Administrative Judge