

DATE: July 18, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-28547

## **DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Nigina Mills, Esq. , Department Counsel

Erin Hogan, Esq., Department Counsel

#### **FOR APPLICANT**

Anthony A. Fatemi, Esq.

### **SYNOPSIS**

Applicant is a businesswoman who owns a company that contracts to provide services to the Department of Defense. She was born in Iran and left that country in 1977 to come to the U.S. as a student. She has eight siblings who live in Iran, Italy, Austria, and the U.S. She traveled to Iran in 1999 and twice in 2000 for services for her deceased parents using an Iranian passport. She has substantial investment in the U.S. and regards the U.S. as her permanent home. Clearance is denied.

### **STATEMENT OF CASE**

On February 12, 2003, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, 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 which detailed 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

In a sworn written statement, dated February 27, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on May 8, 2003. A Notice of Hearing was issued on May 13, 2003 and the hearing was held on June 30, 2003. The Government amended the SOR to add Subparagraph 2.e under Guideline B and introduced three exhibits at the hearing. The Applicant introduced 18 exhibits. All exhibits were accepted into evidence. The Applicant and one witness testified on her behalf. The transcript was received on July 9, 2003. The record was left open at Applicant's request until July 14 for the purpose of submitting one additional document that was received on that date and admitted into evidence.

## FINDINGS OF FACT

Applicant admitted the allegation under Guideline C concerning use of an Iranian passport to enter and exit Iran on three trips in 1999 and 2000. In her answer to the SOR she denied two of the remaining four allegations concerning use of the Iranian passport to travel to Italy in 1998 and that she exercises dual citizenship. She admitted the other two allegations but at the hearing she changed her response to deny them. They involved property ownership and a statement of intent to obtain another Iranian passport made to an investigator.

Applicant admitted all of the allegations under Guideline B concerning her siblings living in Iran, Austria, and Italy. At the hearing the SOR was amended by the government to add one sibling who is a citizen of Iran living in the U.S.

After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant has lived in the U.S. for 26 years having come in 1977 at age 20 to study. She traveled to Iran on a visit in 1978 and decided that she did not want to live there. She did not return again until 1986. She received her B.S. degree in civil engineering in 1984 and became a citizen in 1998. Her husband is also Iranian by birth and is now a citizen of the U.S. as are his parents and others in his family. They have two children who are 16 and 11.

Applicant has eight siblings. Four continue to live in Iran, a fifth is an Austrian citizen and has lived in Austria over thirty years, a sixth is a citizen of Iran but has lived in Italy over thirty years, and the remaining two live in the United States. One of them is a citizen of the U.S and the other is a citizen of Iran who has applied for U.S. citizenship. (Tr. 68-73)

None of her siblings have government positions or do work for any foreign government. One brother was drafted in the military in Iran many years ago.

Applicant has minimal contacts with her siblings in Iran contacting them only a couple of times a year to discuss family matters. Her siblings who live in Europe have visited her in the U.S.

Applicant obtained a U.S. passport soon after becoming a U.S. Citizen. She regards herself as exclusively a citizen of the U.S. She wrote a letter to the Iranian interests section of the Embassy of Pakistan renouncing her Iranian citizenship on April 16, 2003, and surrendered her passport at that time. (Exh. A) (Tr. 75) She has not yet been advised as to their acceptance of the renunciation as required by Iranian law.

Applicant's parents both died in 1999.(Exh. E-J) Applicant's trips to Iran involved the illness of her mother and to attend two traditional services honoring her parents after their deaths. She has not returned since 2000 and has no intention to do so. Applicant used her Iranian passport on the trips to Iran since the government of Iran requires someone born there to use their country's passport when returning. (Tr. 86)

Applicant is alleged to have used her Iranian passport in 1998 on a trip to Italy to visit her brother. She denied the allegation and offered proof to substantiate her claim. (Exh. 2)

Upon the death of their parents the children including Applicant inherited an interest in the property owned by the parents. The property is a home and a building with four apartments. Applicant has relinquished her rights to one brother of her share of the property in a document dated April 29, 2002. (Exh S) The brothers inherited a larger share than the sisters and the value to Applicant was between \$5,000.00 and \$10,000.00. (Tr. 91-93)

Applicant started a company in the U.S. in 1997 providing engineering services to the U.S. government and to private clients. She is the president and chief executive officer of the company and her husband is vice-president and the chief operating officer. The company does no work for foreign governments or corporations.(Tr. 58-59)

There were several errors in the SF 86 submitted by the Applicant concerning the sex of one siblings, the date of birth of one, and the citizenship of another. The facility security officer of Applicant's corporation testified that the errors were made by him and that he submitted the document to the Applicant to sign. She did so in a hurry and the errors were not

corrected. The witness does not have a security clearance but will need one if a new contract with the Department of Navy is obtained. (Tr. 38-49)

Five letters of recommendation from private and government clients state their confidence in the Applicant and attest to her loyalty and dedication. (Exh. K-O)

Applicant has substantial investment in the U.S. as a small business owner and is contributing to the U.S. economy with the employment of a number of people.

## 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should

err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

The applicable Guidelines cited in the SOR concern the following Disqualifying Conditions (DC):

### 1. Foreign Preference, Guideline C

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.

Conditions that could raise a security concern and may be disqualifying include the exercise of dual citizenship or possession and/or use of a foreign passport.

### 2 Foreign Influence-Guideline B:

A security risk may exist when an individual's immediate family, including co-habitants, 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.

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; or

A substantial financial interest in a country , or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

### **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 all allegations set forth in the SOR.

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny her a security clearance because of foreign influence and foreign preference. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Mitigating factors are applicable and evidence was offered in mitigation to both admitted and denied allegations.

Applicant's family is extensive and still consists of four siblings remaining in Iran. This does create a potential security problem under Foreign Influence Disqualifying Condition (DC) 1.

Mitigating Condition (MC) 1 applies in part in that immediate family members are not agents of a foreign power. However, they are in a position to be exploited by a foreign power and thus may constitute an unacceptable security risk.(E2.A2.1.3.1.)

Use of a foreign passport raises questions under foreign preference Guideline C. Although Applicant used her Iranian passport to return there after becoming a U.S. citizen, she did so with no intent to practice dual citizenship. She made no effort to renew it when it expired and has turned it in to the government of Iran.

Mitigating Condition (MC) 4 may be applicable in that Applicant has expressed her intent to renounce dual citizenship and expressed her strong view against holding dual citizenship. The fact that Applicant initially admitted the allegation in the SOR Par. 1.d regarding a statement to the investigator regarding a possible intent to acquire another Iranian passport if she needed to go to Iran prompted the government to move the admission of the investigators statement when Applicant changed her response to deny the allegation. Applicant testified that she was answering only a hypothetical question of the investigator as to what one would need to do to travel to Iran.

As to the financial interest of the Applicant, (DC) 8 requires that the interest be substantial and the (MC) 5 provides that if it is only minimal then it is mitigated. I find that the financial concern has been mitigated because of the low value of the interest in the property and actions taken by the Applicant to divest herself of it.

The process by which Applicant has applied to obtain a security clearance and the resulting number of errors in the SF 86 as well as the the amendment of her Answer to the SOR at the hearing provides an additional factor to question the advisability of granting a clearance at this time. I conclude that a grant would be premature.

### **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.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2 Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: Against Applicant

### **DECISION**

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge