

DATE: December 16, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31208

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the foreign preference security concern due to his current possession of an Iranian passport. Also, he is unable to successfully mitigate the foreign influence security concern due to his close family ties to Iran. Clearance is denied.

STATEMENT OF THE CASE

On November 7, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline C for foreign preference and Guideline B for foreign influence. Applicant responded to the SOR on November 25, 2003, and he indicated he did not wish to have a hearing.

On March 23, 2004, Department Counsel submitted his written case consisting of all relevant and material information that could be adduced at a hearing. This so-called File of Relevant Material (FORM) ⁽²⁾ was mailed to Applicant on or about March 24, 2004, and it was received by Applicant on March 30, 2004. Applicant did not submit any information within the 30-day period after receipt of the FORM. The case was assigned to me on May 12, 2004. Issuing a decision in this case was delayed due a heavy caseload.

FINDINGS OF FACT

Applicant's partial admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the record, I make the following findings of fact:

Applicant is a 46-year-old married man who was born in Iran to Iranian parents in 1958. He is employed as a systems analyst for a company engaged in federal contracting. He has worked for this company since August 2001.

In 1980, Applicant came to the U.S. as a student who studied mechanical engineering, and he was awarded a degree in May 1985. In January 1984, he married his first wife whom he divorced in June 1986. He became a permanent resident alien of the U.S. in 1986, and he became a naturalized U.S. citizen in January 1991.

Applicant remarried in November 1989. His spouse is also a native of Iran, and she obtained U.S. citizenship in 1996. Applicant and his current wife have two children, born in 1991 and 2001, and both children are native-born U.S. citizens.

In conjunction with his current employment, Applicant completed a security-clearance application in August 2001 (Item 4). In doing so, he disclosed his dual citizenship with Iran, as well as that he held an Iranian passport, which was issued in June 1996. He indicated he needed the passport to visit his mother in Iran. Applicant also disclosed multiple family members who are citizens or residents or both of Iran.

In July 2002, Applicant was interviewed by a special agent of the Defense Security Service. That interview produced a signed, sworn statement (Item 5), and Applicant had the following to say about dual citizenship:

I consider myself a loyal US citizen. My wife and two sons are US citizens also. I do not consider myself a Dual Citizen of Iran and the US, but only a citizen of the US. The only connection I have with Iran is that I own less than an acre of family land. I do not plan on doing anything with land but to leave it in the family. I do not exercise or seek any voting rights in Iran, have any financial interest, or have any rights, privileges, or benefits in Iran. I have already renounced my citizenship with Iran when I became a US Citizen. I will do whatever it takes to officially renounce my Iranian citizenship, but I thought this was accomplished when I became a US Citizen.

And Applicant had this to say about possessing a foreign passport:

I have an Iranian passport. The passport number is [#####]. It was issued Jun 96 and the expiration is Jul 06. The only reason I have this passport is because I want to go to Iran to visit my elderly mother at least every other year. Iranian Customs will not allow me to use a US Passport because I was born in Iran. Customs knows that I was born in Iran because it is listed in my US Passport. My current Iranian passport was only issued because I needed it to visit my mother. My initial Iranian passport expired and I never renewed it until Jun 96, when I could not use my US Passport to travel to Iran to visit my mother. I only use this passport to travel to Iran and no place else. I will relinquish my Iranian Passport if it is necessary for me to obtain a US security clearance.

In his response to the SOR, Applicant acknowledged that Iran does not recognize his U.S. citizenship and required him to obtain and use an Iranian passport for his travel to Iran. Also, Applicant explained the family land in Iran was sold and he received his share of the proceeds, which was about \$2,500. Applicant also added he did not have enough vacation to visit his mother in Iran every year, but did plan to do so every three years.

Since obtaining the Iranian passport, Applicant has used it to travel to Iran in 1996, 1999, and 2001, and the passport is valid until July 2006. He traveled to Iran to see his mother who was ill, and he felt obliged to see her. There is no indication in the record that Applicant has surrendered his Iranian passport, and so, I presume he still possesses it.

Applicant has multiple family members who are Iranian citizens, Iranian residents, or both, and his family ties to Iran are described as follows:

1. His mother, who is also a U.S. permanent resident alien, is a citizen of Iran and currently lives there. Applicant describes her as a housewife, and he has regular contact with her by calling as frequent as weekly, every two weeks, or once a month. years) with her. October 2002. Applicant has weekly contact with them. contact with her every one to two years. The other sister is a housewife, and Applicant has contact with her every one to two years. A half-sister is a housewife, and Applicant has contact with her every three to four years. A second half-sister is a school teacher, and Applicant has contact with her every three to four years. A half-brother is a university professor, and Applicant has contact with him every three to four years. obtained U.S. citizenship. In his signed, sworn statement, Applicant indicated one half-brother was unemployed and he had not spoken with this sibling for six

years. Applicant was unaware of the second half-brother's occupation as he had not seen him for eight years. The third half-brother was listed as working as a hotel manager, and Applicant has biweekly contact with him.

Concerning Iran, Department Counsel included Items 7, 8, 9, and 10 in the FORM. These documents are various U.S. Government reports concerning Iran, which I have reviewed and considered. In particular, I have taken administrative notice of two specific areas highlighted below:

1. The U.S. Department of State has designated Iran as a state sponsor of terrorism (Item 7). Reagan's inauguration on January 20, 1981. The United States broke relations with Iran on April 7, 1980, and the two countries have had no official dialogue since. The U.S. Government prohibits most trade with Iran. The U.S. Government has special concerns about four areas of Iranian behavior: (1) its efforts to acquire weapons of mass destruction; (2) its support for and involvement in terrorism; (3) its support for violent opposition to the Middle East peace process; and (4) its dismal human rights records (Item 8).

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

In August 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC3I),⁽³⁾ issued a policy memorandum--the so-called Money Memorandum, because it is signed by Assistant Secretary Arthur L. Money--clarifying the application of the foreign preference security guideline for cases involving possession and/or use of a foreign passport. In pertinent part, the Money Memorandum "requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains approval for its use from the appropriate agency of the United States Government." Included in the FORM, which was provided to Applicant, is a copy of the Money Memorandum (Item 6).

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁴⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁵⁾ The government has the burden of proving controverted facts.⁽⁶⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁷⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁸⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁹⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽¹⁰⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹²⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

1. Guideline C-Foreign Preference

Under Guideline C, a security concern may exist when a person acts in such a way as to indicate a preference for a foreign country over the U.S. In particular, the exercise of dual citizenship raises a security concern because the active exercise of foreign citizenship may indicate a preference for that foreign country over the U.S. Of course, dual citizenship by itself is not automatically a security concern. Absent the exercise of dual citizenship or indicia of some affirmative action demonstrating foreign preference, mere possession of foreign citizenship by virtue of birth does not fall within the scope of Guideline C.

Here, based on the record evidence as a whole, the government established its case under Guideline C. By his affirmative actions, Applicant exercised dual citizenship by obtaining, possessing, and using an Iranian passport after obtaining U.S. citizenship in 1991. By doing so, Applicant demonstrated a preference for Iran. Under these circumstances, DC 1-(13) and DC 2-(14) apply against Applicant. And wholly dispositive or conclusive of this case, there is no record evidence suggesting Applicant has surrendered his passport or obtained official approval for its use. And so, under the Money Memorandum, Applicant's clearance must be denied or revoked. Given the *per se* rule imposed by the Money Memorandum, no useful purpose is served by discussing potential mitigating conditions under Guideline C, because, whatever their application, they are insufficient to mitigate Applicant's possession of the Iranian passport. Accordingly, Guideline C is decided against Applicant.

2. Guideline B-Foreign Influence

Under Guideline B for foreign influence, a security concern 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 U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. In addition, common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service.

Here, based on the record as a whole, the government established its case under Guideline B. Applicant has family ties to Iran, as evidenced by his multiple family members who are Iranian citizens, Iranian residents, or both. Of particular concern is his mother who is a citizen resident of Iran, and Applicant is understandably close to her. The strength of the ties is further demonstrated by Applicant's three trips to Iran, using an Iranian passport, to visit his mother and other family members. These circumstances raise a security concern under DC 1.(15) Given the distant relationship and their legal status in the U.S., however, Applicant has explained and mitigated the government's case concerning his three half-brothers living in the U.S. as alleged in SOR subparagraph 2.d. Likewise, Applicant's parents-in-law, as alleged in SOR subparagraph 2.e, are lawful U.S. residents living in the U.S. and they are seeking U.S. citizenship, and they present little, if any, security concern. In addition, although Applicant had a relatively small financial interest in Iran due to his share of family land as alleged in SOR subparagraph 2.g, that financial interest has been eliminated by the sale of the land. Accordingly, these three subparagraphs are decided for Applicant.

I have reviewed the mitigating conditions under Guideline B and conclude none apply. The only MC deserving serious consideration is MC 1,(16) but it does not apply. It appears that none of the family members are agents of the Iranian government or any other foreign power.(17) But that does not end the analysis, as Applicant must show his family members in Iran are not in position to be exploited by the Iranian government.

In deciding if an applicant has met the second prong of MC 1, it is proper to consider how the foreign country at issue is governed. The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes it is nonsensical to treat North Korea as if it were

Norway. Here, we know Iran is hostile to the U.S. and is ruled by a government with a dismal record of human rights. We also know Iran is making efforts to acquire weapons of mass destruction, and it engages in state-sponsored terrorism. Given these circumstances--which are beyond Applicant's control--the presence of Applicant's family members, especially his mother, in Iran places them at risk of being brought under control or used as a hostage by an Iranian intelligence or security service. Unfortunately, Applicant's family members in Iran are in a position where there is a potential for them to be exploited in a way that could force Applicant to choose between loyalty to his family members and the interests of the U.S. And this potential risk was increased by Applicant's trips to Iran in 1996, 1999, 2001 with an Iranian passport that identified him as a U.S. resident. By doing so, Applicant increased the potential that either he or his family members could be targeted by Iranian authorities. Accordingly, Applicant is unable to successfully mitigate the security concern, and Guideline B is decided against him.

To conclude, Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline C: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

SOR ¶ 2-Guideline B: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: For the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

DECISION

In light of all the circumstances 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.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The FORM contains several documents identified as Items 1 - 10 for consideration.
3. This position is now the Under Secretary of Defense for Intelligence or USD(I), and serves as the Secretary's principal advisor on intelligence matters.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
6. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
7. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
8. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
9. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
12. *Egan*, 484 U.S. at 528, 531.
13. E2.A3.1.2.1. The exercise of dual citizenship.
14. E2.A3.1.2.2. Possession and/or use of a foreign passport.
15. 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 or present in, a foreign country.
16. E2.A2.1.3.1. 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.
17. *See* 50 U.S.C. § 1801(b).