

DATE: November 3, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31458

ECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Government substantiated security concerns over Applicant's foreign preference because of his dual citizenship and use of a foreign passport from Iran after he became a naturalized United States (US) citizen in August 2000. He failed to comply with the Department of Defense (DoD) policy requirements to relinquish his foreign passport issued in August 1999. He stated his intent to renew it when it expired in August 2004. Although he has relatives who are citizens of a foreign country, they do not have ties to the government. Only his brother remains in Iran while both his mother and mother-in-law now reside in the U.S. While he mitigated the allegations of foreign influence, concerns remain over foreign preference. Clearance is denied.

STATEMENT OF THE CASE

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, ⁽¹⁾ so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on June 10, 2003. The SOR detailed security concerns in paragraph 1 over foreign preference (Guideline C) and in paragraph 2 over foreign influence (Guideline B). Applicant received the SOR and replied to these SOR allegations in an Answer forwarded on July 7, 2003, wherein he admitted all of the allegations and requested a decision without a hearing.

The case was assigned to Department Counsel who on October 8, 2003, prepared a File of Relevant Material (FORM) which she then forwarded to Applicant for reply within 30 days of receipt. Applicant received the FORM on October 21, 2003, but submitted no evidence in reply. On March 5, 2004, the case was assigned to me.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 35 years old, has worked at a defense contractor in State #1 from November 2000 to present. He completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) in February 2001. (Exhibit 4)

Applicant received a B.S. degree in 1992 from a university in State #1. (Exhibit 4) Applicant married a U.S. citizen in 1999; they have one child born in July 2001 who is a U.S. citizen. (Exhibits 4, 5)

Foreign Preference

Applicant is a dual citizen of the U.S. and Iran. He was born in Iraq of parents who were citizens of Iran and teaching school in Iraq. He moved to the U.S. in the 1984 to go to high school and college and has been a resident of the U.S. since that time. He became a naturalized U.S. citizen⁽²⁾ in August 2000 and has a U.S. passport issued in August 2000. He has maintained his dual citizenship and his Iranian passport in order to visit his family in Iran as his mother and brother remain citizens of Iran. Indeed the 2002 U.S. Department of State Consular Information Sheet on

Iran suggests that U.S.-Iranian dual citizens use their Iranian passports to enter Iran. (Exhibits 3, 4, 5, 8) Applicant would have an obligation to serve in the Iranian military if he lived there, but he has no intention to live in Iran. He has no intention to serve in the U.S. military. He has no financial interest or property in Iran; however, his mother owns a home valued at \$40,000 in Iran which he might inherit. (Exhibits 3, 4, 5)

Failure to Surrender Foreign Passport

In March 2002 Applicant advised DSS that he chose "not to relinquish" his Iranian passport as he intends to travel there in the future. If he was to travel to Iran on his U.S. passport, upon arrival in Iran, his U.S. passport would be seized and not returned to him. In October 2003 Applicant receiving the FORM including the ASD(C³I) guideline⁽³⁾ which mandates that applicants for a security clearance surrender a foreign passport. Applicant provided no evidence that he sought guidance from the DoD as to how he could then comply with this guideline. There is no evidence that he complied by returning his Iranian passport to the embassy to request that it be cancelled in order to comply with DoD security guidelines. (Exhibits 5, 7, 9)

Foreign Influence

Applicant's mother is a citizen of Iran, but in July 2003 become a resident of the U.S. His mother is a retired teacher. When his mother lived in Iran, he provided financial assistance to her as his father is deceased. His brother works in the private sector in Iran. He has limited contact with his other relatives who live there. His mother-in-law is a citizen of Iran who has lived in the U.S. for over twenty years; he has frequent contact with her; he and his wife helped to support her for the first year of their marriage. There is no evidence that any relative has contact with the government of Iran or has been subject to pressure. (Exhibits 3, 4, 5) The 2003 Consular Information Sheet on Iran provides guidelines for U.S. citizens. While the State Department guidance does advise that foreign visitors may be placed under surveillance, Applicant stated that he believed he was never under surveillance when he has traveled to Iran for visits to his family. (Exhibits 3, 4, 8)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed the following relevant Adjudication Guidelines:

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.

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

- (1) The exercise of dual citizenship;
- (2) Possession and/or use of a foreign passport⁽⁴⁾;

Conditions that could mitigate security concerns include:

None

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: (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.

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

- (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

Conditions that could mitigate security concerns include:

- (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;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order

to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Guideline C - Foreign Preference

A citizen of Iran by birth, Applicant came to the United States in 1984 to pursue his education and in 1992 earned a B.S. degree. He became a naturalized United States citizen in 2000, and subsequently obtained a United States passport. Applicant continued also to maintain his Iranian passport, and planned to renew it for travel to Iran when it expired in August 2004. This active pursuit of a benefit of his foreign citizenship places him in the position of being subject to the duties or obligations owed to two different countries, and raises the potential of him being subject to competing claims. Under the adjudicative guidelines pertinent to foreign preference, disqualifying conditions (DC) E2.A3.1.2.1. the exercise of dual citizenship and E2.A3.1.2.2. possession and/or use of a foreign passport must be considered in

evaluating Applicant's security worthiness. While Applicant derives his foreign citizenship from his birth to parents who were citizens of Iran, security concerns are created by his exercise of a benefit of that foreign citizenship after becoming a U.S. citizen; he has maintained his foreign passport without any official approval or sanction by the United States Government. Maintenance of dual citizenship itself is not per se disqualifying as feelings of affection and even a degree of affiliation for the land of one's birth are understandable. The security concern is whether Applicant can be counted on to act in preference to the United States without concern for the interests of Iran.

As explained by the ASD(C³I) in the August 16, 2000, memorandum, possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount as a foreign passport could facilitate travel unverifiable by the United States. Applicant told the DSS in March 2002 that for reasons of convenience he did not wish to invalidate his Iranian passport. That statement raises a legitimate question as to whether Applicant has a preference for Iran over the United States. Even after Applicant was informed that his possession and use of a foreign passport was potentially security disqualifying, he failed to act to surrender his Iranian passport to comply with the ASD(C³I) mandate. Thus, security concerns related to potentially undetected travel persist. Thus, Applicant failed to demonstrate that his preference is exclusively for the United States as he did not comply with the DoD security guidance.

Therefore, unfavorable findings are warranted with respect to subparagraphs 1.a. and 1.b. of the SOR.

Guideline B - Foreign Influence

Applicant has mitigated the Government's security concerns over foreign influence raised by his close ties of affection to citizens of a foreign country as Applicant has a sibling, a mother, and a mother-in-law who are citizens of Iran. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family. . . and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These relationships 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: (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.

On the other hand, contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Applicant has relatively infrequent contacts with his brother who remains in Iran. While he has closer ties to his mother, both his mother and mother-in-law are residents of the U.S. None have any ties to the government of Iran. Given these circumstances, it is improbable that any of his family members would create a situation that could result in the compromise of classified information.

Although the Government asserts that Iran is part of the "axis of evil," the State Department Consular Information Sheet on Iran submitted does not clearly establish that concern. While the State Department guidance does advise that foreign visitors may be placed under surveillance, Applicant has stated that he believed he was never under surveillance. These security concerns are mitigated as I conclude there is no substantial likelihood that these family ties would exercise foreign influence over Applicant. With only his brother remaining in Iran, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Merely because of these family ties Applicant is not vulnerable to duress.

Further, Applicant has had ties to the U.S. over a twenty-year period of time. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure, so do not invoke foreign influence concerns. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.c. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Although Applicant stated to the Defense Security Service (DSS) in March 2002 that he "renounced" his Iranian citizenship when he took an oath of citizenship to the U.S., there is no evidence that he took any action with the Iranian government to formally renounce his citizenship; indeed he has maintained his Iranian citizenship as he retains his Iranian passport and also stated his intention to renew it when it expired in August 2004. (Exhibit 5)
3. The DoD August 16, 2000, Policy Clarification Memorandum (Exhibit 9) clarified the policy on Foreign Preference, Guideline C and stated, in part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that 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 State Government. Modification of the Guideline is not required.
4. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport"