

DATE: May 7, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31797

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a dual citizen of the United States and Iran, has relatives who are citizens and residents of Iran. Applicant's husband and two sons are also dual citizens of the United States and Iran. Although she has been a U.S. citizen since August 1991, Applicant applied for an Iranian passport in September 1998 that did not expire until September 2003, used that passport for travel to Iran in February 2002, and has not presented any evidence to indicate she has surrendered the Iranian passport. Applicant has failed to mitigate the security concerns of foreign preference and influence that are present in this case. Clearance is denied.

STATEMENT OF THE CASE

On July 15, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence) and Guideline C (foreign preference). Applicant submitted a sworn response to the SOR, dated August 5, 2003, and requested a clearance decision based on the written record without a hearing. Applicant admitted all allegations contained in the SOR, although she averred that her half-brother, who was included in SOR subparagraph 2.b., is now deceased.

Department Counsel prepared a File of Relevant Material (FORM) on December 18, 2003, that was mailed to Applicant January 5, 2004. Applicant did not object to anything contained in the FORM or submit additional information for consideration within the 30-day time period provided to her. The case was assigned to me on March 8, 2004.

FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant, a 52-year-old woman, has been employed by a U.S. company since July 1985, presently as an engineering group manager. She has also worked as a consultant for a U.S. organization since February 1999. She has been married to the same man since September 1972, and has two adult sons.

Applicant was born and raised in Iran. She married her husband, an Iranian citizen, in Iran in September 1972. She obtained a PH. D from a university in the United Kingdom in 1979, and then returned to Iran where she worked as an assistant professor at an Iranian university from February 1980 to May 1981. Her oldest son was born in the U.K. while she and her husband were attending the university there. Her second son was born in Iran. The entire family immigrated to the United States, via Turkey, in approximately December 1981, and became naturalized U.S. citizens on August 5, 1991. Applicant was issued a U.S. passport on January 10, 2001.

Applicant's mother and three sisters are citizens and residents of Iran. Her mother is 78 years old. One of her sisters is a retired teacher. The other two sisters have been housewives their entire lives. Applicant had one half-brother, a medical officer retired from the Iranian military, who is now deceased.

Applicant obtained an Iranian passport on September 29, 1998 that did not expire until September 28, 2003. She used that passport for travel to Iran from February 26, 2002 to March 7, 2002 to vacation and visit relatives. Applicant and her husband and children are all considered Iranian nationals by the Iranian government, and are required by Iran to possess an Iranian passport if they travel to that country. Applicant provided a statement on July 31, 2002 in which she declared: "I have to hold my Iranian passport because that is required when I visit my family. Therefore, I cannot renounce that. You cannot renounce that, it is automatic." She has not supplied any information to indicate she has surrendered the Iranian passport.

Applicant's employment has in the past required occasional foreign travel. She has traveled to India, Brazil, the U.K., Amsterdam, Italy, and the People's Republic of China (on three occasions between December 2000 and July 2001) on business trips normally of three to ten days duration. She has also engaged in leisure travel to Mexico and Canada. She apparently has used her U.S. passport for all travel, other than to Iran, although the passport copies in the FORM are difficult to read.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon 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. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, and Guideline C, pertaining to foreign preference, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole 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.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁴⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance⁽¹⁰⁾

determinations should err, if they must, on the side of denials." Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security. ⁽¹¹⁾

CONCLUSIONS

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.

Applicant's business travel on behalf of her U.S. employer, even to the People's Republic of China, does not in and of itself demonstrate a foreign preference or raise any security concern. However, DC 1: *The exercise of dual citizenship* is one of those acts that demonstrate a foreign preference. Applicant obtained and used an Iranian passport after she became a United States citizen to visit her relatives in 2002. That action is an exercise of dual citizenship. Her statement makes clear she contemplates future travel to Iran, and the use of an Iranian passport.

Further, there is no evidence Applicant has surrendered the passport, even if she did not renew it when it expired in 2003. ASD(C3I) Memorandum, dated August 16, 2000 (the Money Memo) mandates that, "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 States government." The DOHA Appeal Board has held that "merely keeping a foreign passport until it expires does not satisfy the requirement in the ASDC3I memo." ⁽¹²⁾ Accordingly, Guideline C is decided against Applicant.

Foreign Influence. 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.

Based upon the allegations in the SOR, Disqualifying Condition (DC) 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* must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B. Her employment as an assistant professor at an Iranian university from February 1980 to May 1981 does not raise any additional security concern.

DC 1 applies in this case because Applicant's husband is a dual citizen of Iran, and her mother and three sisters are citizens and residents of Iran. The SOR did not allege any concern about the dual citizenship of Applicant's children, or about her in-laws who apparently are also citizens and residents of Iran, and those relationships will not be considered in arriving at a decision.

Once the government meets its burden of proving controverted facts ⁽¹³⁾ the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances. ⁽¹⁴⁾ Further, the government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating conditions, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition. ⁽¹⁵⁾

The following information about Iran and its relations with the United States is significant in determining whether a security concern exists under the known facts in this case:

Iran remained the most active state sponsor of terrorism in 2001. Iran's Islamic Revolutionary Guard Corps (RGC) and Ministry of Intelligence and Security (MOIS) continued to be involved in the planning and support of terrorist acts and supported a variety of groups that use terrorism to pursue their goals. ⁽¹⁶⁾

Large-scale demonstrations have taken place in various regions throughout Iran over the past several years as a result of

a sometimes volatile political climate. U.S. citizens who travel to Iran despite the Travel Warning against such travel should exercise caution throughout the country. . . .

Iranian security personnel may at times place foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personal possessions in hotel rooms may be searched. [\(17\)](#)

The Department of State warns U.S. citizens to consider carefully the risks of travel to Iran. . . . Tensions generated by the current situation in Iraq have increased the potential threat to U.S. citizens and interests abroad posed by those who oppose U.S. policy. Some elements of the Iranian government and population remain hostile to the U.S.. . . . U.S. citizens who go to Iran should exercise caution. . . . U.S. citizens of Iranian origin who are considered by Iran to be Iranian citizens have been detained and harassed by Iranian authorities. [\(18\)](#)

The following Mitigating Conditions (MC) must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B: MC 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, 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; and MC 3: Contact and correspondence with foreign citizens are casual and infrequent.*

The hostility of Iran to the United States places a heavy burden upon Applicant to demonstrate that her family ties with relatives living in Iran do not pose a security risk. [\(19\)](#) Applicant has failed to provide any information upon which such a finding could be based. Accordingly, Guideline B is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline C: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: For the Applicant

SOR ¶ 2-Guideline B: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: For 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. ISCR Case No. 01-24306 (September 30, 2003)
13. Directive, Additional Procedural Guidance, Item E3.1.14
14. Directive, Additional Procedural Guidance, Item E3.1.15
15. ISCR Case No. 99-0597 (December 13, 2000)
16. U.S. Department of State, *Patterns of Global Terrorism*, dated May 21, 2002
17. GE 3 *Consular Information Sheet, Iran, dtd October 20, 2003*
18. GE 4 *Travel Warning, Iran, dtd October 20, 2003*
19. ISCR Case No. 01-26893 (October 16, 2002)