

DATE: May 25, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-32015

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's possession, renewal, and use of a foreign passport after becoming a U.S. citizen demonstrated a foreign preference and was not mitigated where Applicant had neither surrendered the passport nor obtained formal approval for its use. Applicant was potentially subject to foreign influence where his parents and siblings are citizens and residents of Iran. Clearance denied.

**STATEMENT OF THE CASE**

Applicant appeals the 9 October 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) preliminarily denying his security clearance.<sup>(1)</sup> He answered the SOR on 13 November 2003 and requested an administrative decision on the record. He did not respond to the File of Relevant Material, issued 13 February 2003. The record closed on 24 March 2004, the date the response was due at DOHA. The case was assigned to me on 27 April 2004.

**FINDINGS OF FACT**

Applicant admitted the allegations of the SOR; accordingly I incorporate those admissions as findings of fact.

Applicant--a 48-year-old employee of a defense contractor--seeks access to classified information. He has not previously held a clearance, but requires one to work on a future, otherwise undesignated, classified project.

Applicant was born in Iran--governed then by the Shah of Iran<sup>(2)</sup>-- in 1956. He lived in Iran and was educated in Iran from 1956 to June 1975, completing industrial high school. He was drafted into the military and served as a cook in the Iranian Army from February 1976 to February 1978.

Applicant came to the U.S. on a student visa in August 1978. He decided to stay in the U.S. and became a legal

permanent resident (LPR) in 1986. However, he initially did not apply for U.S. citizenship when he first became eligible because he erroneously believed that he could not travel to Iran if he became a U.S. citizen. When he learned that he could to travel to Iran as a dual citizen, he became a U.S. citizen in March 1995, and obtained his U.S. passport in April 1995.

Applicant's central motivation was to ensure his ability to travel back to Iran. While stating that he considers himself only a U.S. citizen, he understands that Iran considers him only a citizen of Iran and that he can only enter Iran on an Iranian passport. Since coming to the U.S. in 1978, he has apparently traveled back to Iran on a regular basis, as he is close to his family. (3) He came to the U.S. in 1978 on an Iranian passport valid for 10 years. He renewed that passport in 1988 for another 10 years. His Iranian passport had expired in 1998 when he had to return to Iran because of his father's illness. He renewed his Iranian passport in June 1998 when he had to travel to Iran to deal with his father's illness. He traveled to Iran on his Iranian passport in July-August 1998, but also used it to travel to Iran in August 1999, December 2000, and December 2001. He intended to travel to Iran in December 2002. (4) In June 2002, he intended to retain his Iranian passport for at least another five years to ensure his ability to sell two properties in Iran and allow two of his sisters to immigrate to the U.S. He sponsored his two sisters for LPR status, but because they are in a different immigration category than his parents, they are not eligible to immigrate to the U.S. until 2005.

When Applicant became a U.S. citizen, he sponsored his parents for LPR status. His parents first came to the U.S. in November or December 1997, obtained their resident alien cards in January 1998 (to expire in January 2008), and returned to Iran in May 1998. They came back to the U.S. in November 2000 and stayed until June or July 2001. There is no evidence that they have been back to the U.S. since. (5) Applicant had been sending his parents \$500.00 to 1,000.00 per year financial support, but now asserts that he no longer does that. He was in the process of buying two properties in Iran in his father's name, expecting to get title in his name when the properties were paid for. He also expects to inherit from his father's estate. (6) Applicant now asserts that he is selling the two properties, but has provided no documentary evidence supporting that claim.

Applicant has not surrendered his Iranian passport. Although he has stated a willingness to do so, he has not taken any steps to comply with the provisions of the Money Memo regarding foreign passports. He has not obtained U.S. Government approval for continued possession and/or use. Similarly, he has indicated a conditional willingness to renounce his Iranian citizenship, but has taken no steps to renounce his citizenship. Iran is a fundamentalist Islamic republic with a poor human rights record and confrontational relations with the U.S.

The record contains no character references or information on Applicant's work performance.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FOREIGN PREFERENCE (GUIDELINE C)**

E2.A3.1.1 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship:

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

E2.A3.1.2.4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country;

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

E2.A3.1.3.2. Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship.

### **FOREIGN INFLUENCE (GUIDELINE B)**

E2.A2.1.1. 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 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

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 in, a foreign country;

E2.A2.1.3. Conditions that could mitigate security concerns include:

None.

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C<sup>3</sup>I) issued a memorandum<sup>(7)</sup> to clarify the application of Guideline C., Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, C<sup>3</sup>I memorandum **"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."** (Emphasis added).

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

Although Applicant has been a dual citizen of Iran and the United States since his naturalization as a U.S. citizen in 1995, his foreign citizenship possesses little security significance if based solely on his birth in a foreign country. For Applicant's conduct to fall within the security concerns of Guideline C, Foreign Preference, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the Government can seek to deny access under Guideline C. The Government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen. Under this assessment, I conclude the Government has established its case under Guideline C and Applicant has not mitigated the security concerns.

While Applicant claims to prefer his U.S. citizenship, his conduct suggests otherwise. He spent the first twenty-two years of his life in Iran. When he came to the U.S. in 1978 to attend college, he cannot be said to have come with a clear intent to reside here permanently. Indeed, although he became an LPR in 1986, he refrained from becoming a U.S. citizen to ensure his ability to return to Iran, which he did frequently. Once he became a U.S. citizen, he maintained and used his Iranian citizenship (and his Iranian passport) to continue his travel to Iran.

The ASD, C<sup>3</sup>I Memorandum effectively resolves this case. The Memorandum states that Applicant's possession and use of his foreign passport can be mitigated only if Applicant surrenders the foreign passport or obtains U.S. Government approval for its use. Applicant has undertaken neither action. While the most recent passport known to the U.S. Government has expired, Applicant's earlier statements of intent to maintain and use his Iranian passport are more credible than his statements of intent to surrender the passport and renounce his Iranian citizenship.

While Applicant has a legal right to maintain his dual citizenship with its attendant benefits and responsibilities, he has not demonstrated that he can be counted on to always act in preference to the United States. As a practical matter, he continues to owe allegiance to Iran where he has family ties. This presents an unacceptable risk that his future decisions will be influenced by concerns for Iran. I resolve Guideline C against Applicant.

For similar reasons, Applicant appears to be vulnerable to foreign influence as alleged in the SOR. His father, mother, and siblings are citizens of Iran, and live in Iran. Applicant is close to his family as evidenced by his own statements and his travel back to Iran to visit them.<sup>(8)</sup> He has sent financial support to his parents, purchased two properties in Iran through his father, and stands to inherit from his father's estate. Although, his parents are both LPRs of the U.S., they continue to reside in Iran, except for the statutory periods required by that status. Notwithstanding Applicant's representations that none of his family are agents of a foreign government, the record contains insufficient information about his family members to conclude that they do not constitute an unacceptable security risk as required by MC 1, particularly where I have concluded that Applicant has a preference for Iran in the first place. I resolve Guideline B against Applicant.

### **FORMAL FINDINGS**

#### Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

#### Paragraph 2. Guideline B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: 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.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. Mohammad Reza Pahlavi became Shah in 1941, fled the country briefly in the early 1950s, but returned to power in 1953. In 1961, Iran initiated a series of economic, social, and administrative reforms--fueled by its vast petroleum reserves--that accelerated modernization and economic at an unprecedented rate. In 1978, religious and political opposition to the Shah (and his hated internal security and intelligence service) increased the level of domestic turmoil in Iran. In January 1979, the Shah fled, and in February 1979 revolution swept the country. The December 1979 constitution created a theocratic republic guided by Islamic principles. In November 1979, revolutionary "students" invaded the U.S. Embassy and took personnel there hostage, not releasing them until 1981. The U.S. severed diplomatic relations with Iran in April 1980.
3. Applicant stated he had telephonic contact with his family every 2-3 weeks, and visited them approximately every year. He also provided detailed descriptions of his siblings and their families, as well as a close friend who lives in Iran. (Item 5).
4. As of Applicant's April and June 2002 sworn statements (Items 5, 8).
5. The permanent resident cards submitted by Applicant prove only that his parents are eligible to reside in the U.S. His sworn statement describes with some precision the actual periods of residence by his parents, and he has not otherwise stated that they are now actually resident in the U.S.
6. Although the estimated value of that inheritance shrunk between Applicant's sworn statement and his answer to the SOR.
7. The so-called "Money Memo" because it was signed by Arthur L. Money.
8. His close family ties stand in sharp contrast to his answer which foreswears any close ties to relatives in Iran.