

DATE: October 26, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-13595

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Jr., Esq., Department Counsel

**FOR APPLICANT**

Patricia G. Mattos, Esq.

**SYNOPSIS**

Applicant is 46 years old, a naturalized U.S. citizen since 1984, and employed as an engineer by a defense contractor. Applicant's mother and brother have permanent U.S. residency, but the mother has not returned to the U.S. for almost three years from her last trip to Iran. Applicant has two married sisters in Iran. Applicant obtained an Iranian passport in 1995 to make a three-week visit to his family. Applicant did not disclose his dual U.S.- Iranian citizenship, or his past possession of U.S. and Iranian passports on his security clearance application. Applicant mitigated the foreign influence, foreign preference, and personal conduct security concerns. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On September 10, 2003, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision regarding the security concerns raised under Guideline B (Foreign Influence), Guideline C (Foreign Preference), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on October 8, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on February 4, 2004. On May 4, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on May 13, 2004.

**PROCEDURAL MATTERS**

The Government moved to amend subparagraph 1.a. to delete the original language, and substitute therefor the language, "Your mother is a citizen of Iran." Applicant had no objection to the amendment, and I granted the motion. (Tr. 78)

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 46 years old, married to a native-born American woman, and has a 21-year-old son who was born in the United States and is an American citizen. He has bachelors' degrees in mechanical and civil engineering. He has worked for the same defense contractor since 1983. Applicant has had a secret clearance since 1987, and a confidential clearance from 1985 to 1987. He has had no security problems while holding these clearances. He owns a home and has substantial financial assets in the U.S. Applicant immigrated to the U.S. from Iran in 1978 to attend college. He became a U.S. citizen in 1984. (Exhibits 1 to 4; Tr. 23 to 30, 46, 64)

Applicant had an Iranian passport until he became a U.S. citizen in 1984. He later obtained a U.S. passport that was valid until 1997, when it expired. Applicant's original Iranian passport expired before 1995. In 1995, Applicant traveled to Iran for three weeks to visit his mother, brother, and two sisters, and their families. Applicant informed his company's security office in advance about his trip. While holding his security clearance since 1987, Applicant has not had any security violations. Applicant's wife and son did not accompany him on that trip, nor have they ever traveled to Iran. Applicant is concerned about their security as Americans in Iran. Applicant traveled to Iran in 1979 to visit his family, and used his original Iranian passport at that time. Applicant was concerned about traveling to Iran in 1995 using an American passport, concerned he may not be able to leave Iran. Applicant filled out the necessary forms and obtained an Iranian passport and used that passport for his trip. That passport expired after three years, and Applicant threw it away. Applicant has no plans to travel to Iran again, at least until after he retires from his employment. Applicant did not have any problems with Iranian authorities during his trip in 1995. Applicant does not consider himself a dual U.S.- Iranian citizen. He tried to renounce his Iranian citizenship in 1984 when he became a U.S. citizen, but the Iranian government would not allow him to do so. Applicant continues his willingness to renounce his Iranian citizenship. Applicant has lived in the U.S. for 26 years, and spent only his first 18 years in Iran before he immigrated to the U.S. (Exhibits 1 to 4; Tr. 23 to 33, 41, 42, 43, 45, 47, 60)

Applicant's father is deceased, his mother has permanent residency in the U.S. since 1994, but travels back and forth to Iran from the U.S. every four or five months to visit her daughters and grandchildren still living in Iran. Applicant's mother has not been able to return to the U.S. from her last trip to Iran for about 2.5 to 3 years because she is 75 years old and has back problems that make long trips uncomfortable. Applicant's mother has a home worth about \$400,000 in Iran, and inherited sufficient money to live comfortably from her husband when he died in 1978. Applicant's father was a car dealer. Applicant's sisters and their husbands are merchants selling products in the marketplaces and bazaars of Iran. Applicant's older brother immigrated to the U.S. about four years ago to obtain better medical treatment for one of his children. That brother now owns a townhouse in the community in which he settled, and is trying to become a teacher, which is the job he had in Iran. Applicant's brother is a permanent U.S. resident. None of his relatives have any connection to the Iranian government. Applicant's younger brother died at age 20 some time before 1995. Applicant did not return to Iran to attend the funeral because of the work load at his job and his concerns about the effect such a trip would have on his security clearance eligibility. (Exhibits 1 to 5; Tr. 27 to 40, 47, 52 to 55, 58, 69)

Applicant speaks with his sisters several times a year. He speaks with his mother monthly. Applicant gives his mother \$2,000 to help with her support. (Exhibits 2 to 5; Tr. 36)

Applicant did not disclose his Iranian citizenship on his 2000 security clearance application (SCA) in response to Question 3. He also did not answer a similar question on his 1985 SCA. Applicant also did not disclose that he had a U.S. passport that expired in 1997 in response to Question 3. In Question 15 Applicant did not disclose he obtained an Iranian passport in 1995. Applicant did disclose in response Question 16 that he traveled to Iran in 1995. Applicant did not consider himself a dual citizen as of the date of his naturalization in 1984. Applicant thought only of current passports that he held, and having none, he thought he answered Questions 3 and 15 truthfully. (Exhibits 1; Tr. 32 to 34, 60, 66, 67)

Applicant submitted character witness testimony from a co-worker who worked on a daily basis with Applicant from 1985 until 1992. The witness testified Applicant was an honest man and had great integrity. (Tr. 73 to 78)

Applicant submitted evidence showing the renunciation of Iranian citizenship requires approval of the Iranian Government Council of Ministers, the person seeking to renounce has performed the mandatory two years of military service that Applicant did not perform in his youth, reached the age of 25, and settled all that person's affairs in Iran. Iran does not recognize dual citizenship. According to this evidence, Applicant has dual citizenship and any attempts to renounce his Iran citizenship would not be recognized by the Iranian government. (Exhibit B)

## 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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec.

Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

### **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 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.

Directive, ¶ E2.A2.1.1.

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. Directive, ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

A determination that the immediate family member(s) 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. Directive, ¶ E2.A2.1.3.1.

### **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. Directive ¶ E2.A3 .1.1.

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

The exercise of dual citizenship. Directive ¶ E2.A3.1.2.1.

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

Conditions that could mitigate security concerns include: E2.A3.1.3.

Dual citizenship is based solely on parents' citizenship or birth in a foreign country. Directive ¶ E2.A3.1.3.1.

Individual has expressed a willingness to renounce dual citizenship.

Directive ¶ E2.A3.1.3.4.

Applicable also is the Memorandum of August 16, 2000, entitled "Guidance of DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudicative Guidelines", by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), commonly known as the "Money Memo". This memorandum guidance provides that

possession and/or use of a foreign passport may be a disqualifying condition. . .The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raised 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 until the applicant surrenders the foreign passport or obtains official approval for its use from the

appropriate agency of the United States Government.

### **GUIDELINE E - Personal Conduct:**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

(2) The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; E2.A5.1.2.2.

Conditions that could mitigate security concerns include:

(3) The individual made prompt, good-faith efforts to correct the falsification

before being confronted with the facts. E2.A5.1.3.3

(5) The individual has taken positive steps to significantly reduce or eliminate

vulnerability to coercion, exploitation, or duress. E2.A5.1.3.5.

### **CONCLUSIONS**

Regarding Guideline B, DOHA alleged Applicant has a mother, a brother, and two sisters and their husbands, who are citizens of Iran. The mother and brother have permanent residency in the U.S., but Applicant's mother is in Iran and has been for the past 2.5 to 3 years, unable to return to the U.S. because of her health problems. Disqualifying Condition (DC) 1 applies.

Applicant's sisters, their husbands, Applicant's mother and brother, are not agents of the Iranian government. Applicant showed that fact. Applicant's mother and sisters, but more so the mother, are in a position to be exploited by the Iranian government in a way to force Applicant to choose between loyalty to them and to the U.S. Applicant's mother could be prevented from returning to the U.S. unless Applicant supplied something the Iranian government wanted. However, her age and Applicant's disinterest in inheriting any property from her, counterbalances this concern. Applicant also has 26 years of residence in the U.S., and an American wife and son, coupled with substantial assets in the U.S. that would counter any pressure from the Iranian government. I apply mitigating Condition (MC) 1. Applicant's contacts with his mother and sisters are not casual and infrequent because of the family relationship. MC 3 does not apply. I conclude this guideline for Applicant.

Regarding Guideline C, Applicant returned twice to Iran in 26 years. The first time after about a year in the U.S. The next time was in 1995, 16 years later. That trip was 9 years ago. Applicant could have used his U.S. passport to travel to Iran, but because of his Iranian citizenship and the tensions between the U.S. and Iran, he obtained an Iranian passport and used that passport. DC 1 and DC 2 apply.

Applicant obtained his Iranian citizenship by birth in Iran. He tried to renounce it in 1984 but was told Iranian law does not allow such renunciations. At the hearing he again expressed his willingness to renounce his Iranian citizenship. MC 4 applies. The Iranian passport he obtained in 1995 expired by 1998, and he threw that passport into the trash. The Money Memo requires the surrender of the Iranian passport. But that requirement was imposed in August 2000, after Applicant's passport expired and was disposed of by him. While expiration is not surrender as required by the Money Memo, Applicant cannot surrender something he no longer possesses. It would be absurd to require him to obtain another Iranian passport merely to surrender it. Applicant cannot obtain another Iranian passport and maintain his security clearance, and he stated he would not travel to Iran again as long as he was employed and before he retired,

which would prohibit him from such travel for at least 20 years. I conclude this security concern has been mitigated, particularly in consideration of the adjudicative process principles set forth in ¶E2.2 of the Directive. I conclude this guideline for Applicant.

The Personal Conduct Guideline security concern arises from Applicant's failure to disclose he is legally a dual citizen with Iran and an Iranian passport from 1995 to 1998. Applicant testified at the hearing that he has not considered himself a dual citizen since he became a U.S. citizen in 1984. The citizenship oath does contain language about renouncing all allegiances to foreign princes and government. Because of this belief, he answered the same question on the 1985 and 2000 SCA the same way, that he is not a dual citizen. That consistency bolsters his testimony, and I find the explanation credible. Applicant then testified he was only thinking of any passports he held presently when he answered the other part of Question 3 and Question 15. The language of both is clear, but his mistaken belief here is reasonable. He should read the questions more carefully in the future to avoid misunderstandings, and he should use Question 43 to explain any doubts or issues he has so the Government will be on notice. Applicant did reveal in Question 16 his trip to Iran in 1995, and that disclosure with the answers provided to the Questions 3 and 15 were inconsistent to the extent the Government should have been on notice something was missing. After considering all of the evidence, and determining Applicant is credible in his explanation, I conclude there was no deliberate falsification, but only misunderstanding and misinterpretation by Applicant. I do not apply any DC, and no MC need be applied. If MC were applied, MC 2 would apply. Therefore, I conclude this guideline for Applicant.

Applicant is now on notice that he needs to make full disclosure of all citizenships and passports he holds or has ever held on his next periodic review of his security clearance. Such disclosures need to be on the SCA. Furthermore, Applicant is now on notice about the Money Memo and cannot obtain another Iranian passport and hope to retain his security clearance. Applicant should also read each question carefully on any government form and answer each question with full disclosure, not making judgments on his own about what is expected in any answer. Full disclosure is the rule and requirement.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph 2.a: FOR APPLICANT

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).