

DATE: February 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14995

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Star Majlessi, Personal Representative

SYNOPSIS

Applicant, an employee of a defense contractor, emigrated to the U.S. from Iran in 1972 and became a citizen in 1982. Her brother and a sister are citizens and residents of Iran. The brother and two other members of the family have suffered death, imprisonment, and harassment by the present government. The family has endured and resists pressures well. Applicant traveled to Iran five times over the past 30 years to visit family using her Iranian passport. She has now destroyed the passport and returned it to the Government of Iran. Applicant has no interest in or loyalty to Iran. Clearance is granted.

STATEMENT OF CASE

On June 13, 2003, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

In a sworn written statement, dated July 7, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to another administrative judge who could not hold the hearing because of workload and it was then reassigned to me on November 25, 2003. A Notice of Hearing was issued on November 28, 2003 and the hearing was held on December 9, 2003. The Government and the Applicant each introduced four exhibits at the hearing and all were accepted into evidence. The Applicant testified on her own behalf and was assisted by her daughter who served as her personal representative. The transcript was received on December 22, 2003.

FINDINGS OF FACT

Applicant admitted the allegation under Guideline C concerning use of an Iranian passport to enter and exit Iran on five trips over the past thirty years. Applicant admitted under Guideline B that her mother, brother and one sister are living in Iran. Another sister is still a citizen of Iran but lives in the United States. Those admissions are incorporated as findings of fact.

After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant has been employed by a major U.S. defense contractor since 1984 and has held a security clearance since that time. (TR. 60) She is highly regarded by her employer for the work she does in records management and has received several recognition awards. (Exh. C and D.)

Applicant came to the U.S. in 1972 as a student and became a citizen in 1982. (TR. 26) She worked as a hairdresser for several years while her husband completed his education and then she studied for and received her Master's of Business Administration. Her husband is also Iranian by birth and is now a citizen of the U.S. They met in Iran but married in the U.S. They have two daughters who are studying at universities. One, who served as Applicant's personal representative, is a law student and the other is an undergraduate. (TR. 15-16)

Applicant has two sisters who live in the U.S. Applicant is sponsoring one of them for citizenship. (TR. 31-32) Neither of her two siblings who live in Iran have government positions or work for any foreign government. Her brother was in military service in Iran before the revolution and retired for medical disability just as the revolution occurred. He receives a small military pension. After retirement he taught philosophy in a university until he encountered oppressive teaching restrictions placed on him by the government and resigned. (TR. 28-29) Applicant's sister in Iran is a retired school teacher who receives a pension and is now a housewife. (TR 35)

A cousin of the Applicant was killed in police custody in 1983 soon after the revolution in Iran after he was arrested for protesting the influence of religion in government. A niece was imprisoned several years later for involvement in publishing protest papers. (TR. 41, 42, and 53)

Applicant has minimal contacts with her siblings in Iran and contacts them only a few times a year to discuss family matters. Applicant's mother is currently living with her in the U.S. but returns occasionally to visit her family and because Farsi is her only language and this creates emotional tension. (TR. 38)

Applicant obtained a U.S. passport soon after becoming a U.S. Citizen. She regards herself as exclusively a citizen of the U.S. Applicant used her Iranian passport on five trips to Iran in 1977, 1979, 1983, 1989 and 1994. The government of Iran requires someone born there to use their country's passport when returning. (Tr. 40). When she traveled there she did not identify herself as an employee of a U.S. company but as a housewife. The first trip she made after the revolution in 1979 was to evaluate whether to return there to live. She concluded against that possibility. Several of the later trips were with her husband to visit his mother who has since died. The last trip was after her brother had a heart attack and she went to visit him.(TR. 45)

Applicant has destroyed her Iranian passport and sent the remains to the Iranian interests section of the Embassy of Pakistan in December, 2003. (Exh. A and B) (TR. 9) She has no intention of traveling there again but if such is required for any reason she will use her U.S. passport if she can obtain a visa.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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* Executive Order No. 12968 § 3.1(b)

The applicable Guidelines cited in the SOR concern the following Disqualifying Conditions (DC):

1. Foreign Preference, Guideline C

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 the exercise of dual citizenship or possession and/or use of a foreign passport (DC 2).

Possible mitigating conditions (MC) include the fact that the dual citizenship is based solely on birth in a foreign country (1) or the individual has expressed a willingness to renounce dual citizenship (4).

2 Foreign Influence-Guideline B:

A security risk may exist when an individual's immediate family, including co-habitants, 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.

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 in a foreign country (DC 1).

Possible mitigating conditions (MC) that might be applicable are a determination that the immediate family members would not constitute an unacceptable security risk (1) and that contact and correspondence with foreign citizens are casual and infrequent (3).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny her

a security clearance because of foreign influence and foreign preference. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Mitigating factors are applicable and evidence was offered in mitigation to both admitted and denied allegations.

Applicant's family is extensive and includes her two siblings in Iran. This creates a potential security problem under Guideline B Foreign Influence Disqualifying Condition (DC) 1.

Mitigating Condition (MC) 1 applies in part in that immediate family members are not agents of a foreign power. The fact that Applicant's brother, cousin and niece have all encountered difficulties with the present government to the extent of suffering death, imprisonment, and restrictions leading to loss of employment might lead one to argue that she is vulnerable to pressure. However, the opposite conclusion is more acceptable. Having lived with this history of repressive actions against family members, it is more likely that Applicant would successfully resist any such efforts to cause her to be a security risk. As she testified at the hearing, the family is prepared to put up with such things and survive. (TR.56-57) Her siblings in Iran do not know of her employment and thinks the only secrets she might know are the family recipes.

Use of a foreign passport raises questions under Guideline C Foreign Preference. Although Applicant used her Iranian passport to travel there after becoming a U.S. citizen, she did so with no intent to practice dual citizenship. Her travels were for family reasons and she has destroyed the passport and turned it in to the government of Iran. The Department Counsel conceded at the hearing that the Money Memorandum is not applicable to the facts in this case and that Applicant had successfully mitigated issues alleged under Guideline C. (TR. 47)

Mitigating Condition (MC) 4 is applicable in that Applicant has expressed her intent to renounce dual citizenship and expressed her strong view against holding dual citizenship. I find that Applicant has met the burden of proof requirements and established that she is qualified to continue to hold a security clearance.

Applicant is a very determined person who exudes confidence and great loyalty and gratitude to the United States. Her testimony was totally credible.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that she is trustworthy and reliable, and that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph I Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2 Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Charles D. Ablard

Administrative Judge