

DATE: January 9, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-16076

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

#### **FOR APPLICANT**

Pamela J. Naughton, Esq.

### **SYNOPSIS**

Applicant has a brother and three sisters who are citizens and residents of Iran. After becoming a U.S. citizen and obtaining a U.S. passport, Applicant traveled to Iran on an Iranian passport to attend his mother's funeral in 1991, and to visit his then living father and siblings in 1995. He renewed his expired Iranian passport in 2001 so he could visit his ill father. He never made the trip and returned the passport to the Iranian government. Applicant failed to sufficiently mitigate foreign preference and foreign influence security concerns. Security clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 24 June 2003, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 25 July 2003 and elected to have a hearing before an administrative judge. The case was originally assigned to another administrative judge, but was transferred to me on 12 November 2003. On 8 December 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding 31 December 2003.

### **FINDINGS OF FACT**

Applicant is a 51-year-old facilities manager for a defense contractor. He was born in Iran of Iranian parents. He has three brothers and three sisters. One brother is an Iranian citizen residing in the U.S. and another brother is a German citizen and resident. One of his brothers and his three sisters are citizens and residents of Iran. The brother who still resides in Iran served in the Iranian Army, retiring as an officer after 20-25 years of service. Tr. 111. His sisters are housewives. Applicant corresponds with his brothers and sisters once or twice a year. His brother and sisters in Iran telephone Applicant approximately once a year.

Applicant came to the U.S. in 1976, on an Iranian passport, to further his education. In 1979, the Government of Iran was toppled in a revolution and Applicant decided not to return to his home in Iran. He became a U.S. citizen in January 1986 and obtained a U.S. passport in May that same year. Applicant continued to hold an Iranian passport. Applicant married a native-born U.S. citizen in 1990, and they have a son born in the U.S. in seven years ago. Neither his wife nor his son have been to Iran. Applicant has no foreign investments or other financial interests in Iran. He directed that any inheritance from his father be split among his three sisters in Iran. Tr. 98. None of his siblings in Iran, or any of their spouses, work for the Iranian government.

Applicant traveled to Iran in 1979 to visit his family, in 1991 for the funeral of his mother, and in 1995 to visit his family. At the start of the 1995 trip, he visited his brother in Germany. He stayed in Iran between one and two months on these trips. Ex. 2 at 3. On his last two trips to Iran, Applicant departed and entered the U.S. on his U.S. passport, but used his Iranian passport to enter and leave Iran. His Iranian passport expired in 1997. Applicant has always traveled on his U.S. passport, except for entering and exiting Iran. Tr. 97.

In April 2001, Applicant renewed his Iranian passport so he could visit his ill father. Ex. 2 at 2. He completed his security clearance application (SCA) on 30 April 2001. In it, he claimed he was not a dual citizen, listed his Iranian passport that expired in 1997, but failed to note he had obtained a new passport that same month. Ex. 1 at 5. Applicant never used this Iranian passport and, after the terrorist acts of 11 September 2001, decided not to return to Iran for his father's funeral. He mailed his Iranian passport back to the Iranian Interests Section of the Pakistani Embassy on 25 July 2003. <sup>(3)</sup> Exs. A and 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

## Guideline C-Foreign Preference

In the SOR, DOHA alleged Applicant is a dual citizen of Iran and the U.S. (§ 1.a.); possesses an Iranian passport (§ 1.b.); and used his Iranian passport in preference to his U.S. passport to enter Iran (§ 1.c.). When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., then he may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive § E2.A3.1.1.

The Government established by substantial evidence and Applicant's admissions that Applicant possessed and used an Iranian passport in preference to his U.S. passport to enter and exit Iran in 1991 and 1995, and renewed his passport in 2001. The holding and use of a foreign passport is the exercise of dual citizenship (DC E2.A3.1.2.1., E2.A3.1.2.2.) . See ISCR Case No. 01-02270 at 3 (App. Bd. Aug. 29, 2003). Although, Applicant's dual citizenship is based solely on his birth in Iran (MC E2.A3.1.3.1), it is his exercise of that dual citizenship by possessing and using an Iranian passport after he became a U.S. citizen that is the security concern. Although Applicant believed it was necessary for him to use an Iranian passport to enter and depart Iran, foreign preference can be shown by an applicant's exercise of the rights and privileges of foreign citizenship for reasons of personal convenience or expediency. ISCR Case No. 02-02052 at 4 (App. Bd. Apr. 8, 2003). Applicant has expressed a willingness to renounce his dual citizenship, but apparently there is no way to do so. Iran appears not to have a procedure to, or accepts the fact that someone could, renounce his citizenship. However, Applicant has returned his passport to the Iranian government.

After considering all the facts and circumstances of this case, I find against Applicant.

## Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's father (§ 2.a.) and sisters and one brother (§ 2.b.) are citizens and residents of Iran, and one of his brothers is a citizen and resident of Germany (§ 2.c.). A security risk may exist when an applicant's immediate family are not citizens of the U.S. or may be subject to duress. Directive § E2.A2.1.1.

The Government established by substantial evidence and Applicant's admissions that Applicant's three sisters and one brother are residents and citizens of Iran and another brother is a resident and citizen of Germany. Applicant's father is now deceased and no longer represents a security concern. An applicant with immediate family members who are citizens and residents of a foreign country may be a security concern. DC E2.A2.1.2.1. Under Guideline B, it is important to consider the totality of an applicant's family ties in a foreign country, not just each family tie considered in isolation. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

It is a mitigating condition if an applicant's contacts and correspondence with foreign citizens are casual and infrequent. MC E2.A2.1.3.3. In this context, "casual" means "not close or intimate; passing." American Heritage Dictionary of the English Language 299 (3d ed. 1992). "Infrequent" means "not occurring regularly; occasional or rare." *Id.* at 927. Evidence that an applicant has contacts with an immediate family member in a foreign country raises a rebuttable presumption that those contacts are not casual in nature. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). The closer the relationship the less contact is necessary to conclude this mitigating condition fails. Similarly, the greater the contact the less close the relationship needs to be to cause the mitigating condition to fail. Although Applicant's contacts with his brother and sisters in Iran is infrequent, I am unable to conclude his relationship with them is casual.

It is a mitigating condition if the immediate family members 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 applicant to choose between loyalty to the persons involved and the U.S. MC E2.A2.1.3.1. An evaluation of the evidence under this mitigating condition requires consideration of whether Applicant's contacts in a foreign country place him in a position of vulnerability to be influenced by coercive or noncoercive means. ISCR Case No. 00-0628 at 5 (App. Bd. Feb. 24, 2003).

Since the 1979 revolution in Iran, the U.S. and Iran have been adversaries. Impediments to improved relations with Iran are (1) the Iranian effort to acquire nuclear weapons and other weapons of mass destruction; (2) its support for and involvement in international terrorism; (3) its support for violent opposition to the Middle East peace process; and (4) its dismal human rights record. Ex. 3 at 6-7.

There is no evidence Applicant is other than a loyal U.S. citizen. By attending his mother's funeral and visiting his father

and siblings, Applicant was performing appropriate familial duties of a son and brother. Nevertheless, performing such duties demonstrates the sense of obligation Applicant has towards his family. Applicant does not have a favorable opinion of Iran—he would not take his wife or son there while the present government is in power. However, a person may be vulnerable to foreign influence even if does not have a favorable opinion toward that country. *See* ISCR Case No. 99-0601 at 6 (App. Bd. Jan. 30, 2001). There is no question but that Applicant's brother and sisters in Iran are in a vulnerable position that could force Applicant to choose between loyalty to them and loyalty to the U.S. Accordingly, I find against Applicant on all but ¶ 2.a.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

### **DECISION**

In light of all of 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.

**James A. Young**

**Administrative Judge**

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Although Applicant claimed he obtained the new passport by sending his expired passport to the Iranian Interests Section of the Algerian Embassy, it appears this was a mistake. The Iranian Interests Section is associated with the Pakistani Embassy, while the Algerian Embassy sponsors the Iraqi Interests Section. Applicant mailed both the request for renewal and the return of his Iranian passport to the same physical address in Washington, DC.