

DATE: December 29, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17153

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a dual citizen of the United States and Iran, has failed to fulfill the requirements of the Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence, dated August 16, 2000, (Money Memorandum) by not relinquishing his Iranian passport to the proper Iranian authorities, but allowing it to lapse and indicating the desire to reserve the right to renew it. Applicant's immediate family members, including his mother, with whom he has close and continuing contact, and sister are citizens of and reside in Iran. The evidence establishes that Applicant is vulnerable to foreign influence. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated February 28, 2003, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign preference (guideline C) related to his exercise of dual citizenship with the United States and Iran, and his intention to renew a foreign passport and continue to use it for travel; and on foreign influence (guideline B) concerns because of the foreign residency and citizenship of close family members.

Applicant, acting *pro se*, filed a notarized response dated March 24, 2003, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

On July 21, 2003, this case was assigned to another Administrative Judge, but on September 3, 2003, because of caseload consideration, the case was reassigned to me to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on September 11, 2003, and the hearing was held on October 9, 2003.

At the hearing, Department Counsel offered seven documentary exhibits (Exhibits 1 through 7) and no witnesses were called. Applicant offered no documentary exhibits but offered his own testimony. The transcript (TR) was received on October 20, 2003.

FINDINGS OF FACT

In his response to the SOR, Applicant admits all eight allegations, 1.a. through 1.d., and 2.a. through 2.d. These allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is a 59 year old employee of a defense contractor. He is married and has two sons. He received a masters degree in electrical engineering from a United States university.

Applicant was born in Iran in 1944 and immigrated to the United States in 1968. In 1976 he moved back to Iran with the thought of living there again, but he quickly changed his mind and moved back to the United States in 1977. He became a naturalized United States citizen in 1978.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that Applicant is ineligible for clearance because he has acted in such a way as to indicate a preference for another country over the United States.

Applicant retained his Iranian passport after he became a United States citizen . He traveled to Iran to visit his family in the years 1991, 1996, and 2000 (Tr at 31) (Exhibit1). He used his Iranian passport on these trips. Applicant testified that he does not consider himself a citizen of Iran, but he conceded that he retained and used his Iranian passport because Iran considered him an Iranian citizen (Tr at 37, 38).

Applicant's Iranian passport expired in April 2001. He took no affirmative step to relinquish his Iranian passport to the proper Iranian authorities, and he testified that since he cannot travel to Iran with a United States passport, he reserves the right to renew his Iranian passport (Tr at 35, 36).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

Applicant's mother is a citizen of and resides in Iran. He is extremely close to her and speaks to her by telephone ever other week (Tr at 31). Applicant's mother owns an apartment in Iran, which Applicant may be in line to inherit with his two siblings, although the status of this property is not certain. (Applicant's response to the SOR). Applicant has a sister who is a citizen of and resides in Iran, and a brother who is a dual citizen of Iran and the United States (Tr at 28, 29).

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2.

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 criterion 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 emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Preference

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 also include:

E2.A3.1.2.1 The exercise of dual citizenship.

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

Foreign Influence

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 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.

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 or present in, a foreign country

E2.A2.1.2.8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

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

None.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to

demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guidelines C and B:

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant's failure to relinquish his Iranian passport to the proper Iranian authorities and his stated intention to reserve the right to renew the passport raises serious foreign preference (guideline C) concerns. It is a violation of the Money Memorandum, and therefore Applicant is absolutely barred from retaining a security clearance. Applicant's unwillingness to renounce his Iranian citizenship so that he could maintain the option of renewing his passport, must also be considered adversely to Applicant. Disqualifying Condition (DC) E2.A3.1.2.1. applies because Applicant's use of his Iranian passport after he became a United States citizen is a continuing example of Applicant's exercising dual citizenship. DC E2.A3.1.2.2. also applies because of Applicant's failure to return his passport to the proper authorities. No mitigating condition (MC) applies in this case under Guideline C.

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Based on the evidence of record, the Government has established a reason to deny Applicant a security clearance because of foreign influence. As Applicant's mother, with whom he has a very close personal relationship, and sister are citizens of Iran, a country which is undisputedly hostile to the Government of the United States, Applicant has a very heavy burden of showing that this family members do not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002). The Iranian citizenship of members of Applicant's immediate family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001). This Applicant has not been able to do.

The evidence of existence of immediate family members, who are citizens of Iran, comes within DC E2.A2.1.2.1. I conclude that the potential to inherit an interest in an apartment is so tenuous that DC E2.A2.1.2.8. does not apply. No MC applies under Guideline B.

After considering all of the evidence of record on the issue of foreign influence, I conclude that the evidence supporting the SOR substantially outweighs any mitigating evidence.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph 1. a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Paragraph 2. Guideline B: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: 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.

Martin H. Mogul

Administrative Judge