

DATE: November 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21032

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Gary Rigney, Esquire

SYNOPSIS

Applicant mitigated security concerns over foreign preference, foreign influence, and personal conduct. Her husband was born in Iran and has family who remain there, but she has renounced any claims of citizenship in Iran based on her husband's birth. During a 1992 visit Iranian policies forced her to obtain an Iranian passport to leave the country, but her Iranian passport is no longer valid. Given her long history of responsible conduct, I think it improbable that foreign pressure would subject her to duress from her husband's family in Iran. Further, personal conduct concerns over her failure to list her 1998 Iranian passport are mitigated as she had no intent to falsify and did list her 1992 Iranian passport on her security forms. References attest to her good character, extol her excellence at work, and recommend her for a security clearance. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on April 28, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.⁽¹⁾ The SOR alleges specific concerns over foreign preference (Guideline C) in paragraph 1, foreign influence (Guideline B) in paragraph 2, and personal conduct (Guideline E) in paragraph 3. Applicant replied to the SOR allegations in an Answer notarized on May 28, 2003, and requested a decision be made without a hearing. Subsequently, she retained counsel who on August 18, 2003, requested a hearing.

The case was assigned to Department Counsel who attested it was ready to proceed on September 11, 2003. After the case was assigned to me on September 16, 2003. After a mutually convenient date for hearing was agreed to, a Notice of Hearing issued on September 26, 2003, set the matter for October 6, 2003. At the hearing the Government introduced three exhibits which were admitted into evidence (Exhibits 1-3); also I took judicial notice of five exhibits (Exhibits I-V). Applicant testified, called six witness, offered five exhibits (Exhibits A through E) which were admitted into evidence. Also, I took judicial notice of one exhibit (Exhibit VI). The transcript (TR) was received on October 15, 2003.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 44 years old, began working for a defense contractor (Employer #1) in State #1 in February 2000. In March 2000 and again in July 2002 she completed a Security Clearance Application (SF 86) and requested a security clearance which she needs for the position.

She obtained a degree in engineering in 1980 from a state university; she met her husband there in 1979. Applicant married her husband in November 1983; they have three children, ages 18, 16, and 12.

Foreign Preference and Foreign Influence

Applicant was born in the United States (U.S.), but Applicant's husband was born in Iran. He became a U.S. citizen in 1988. The majority of his family remain in Iran. When they went to visit his family in Iran in 1992, Applicant obtained a visa on her U.S. passport to enter Iran. However, Iranian officials seized ⁽²⁾ her U.S. passport when she entered Iran as under Iranian law she was considered to have Iranian nationality through her husband. Iranian officials advised that since her husband was Iranian by birth, she would need to obtain an Iranian passport to exit Iran. The Swiss Embassy in Iran which handled U.S. interests then also advised her to obtain an Iranian passport in order to leave the country. She did so in July 1992 and used the Iranian passport once to leave Iran. Subsequently, she renewed her Iranian passport in May 1998 in order to have it available for future visits with her husband's family in Iran; it was valid until ay 2003. However, she never used the Iranian passport again, and it is now expired. On all subsequent overseas travel in 1993 and 1999, she has used her U.S. passport exclusively.

Applicant did not know that possession of a foreign passport could preclude her from getting a security clearance until she got the SOR in May 2003 and also received the DoD policy clarification of Guideline C issued in August 2000 which made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport . . ."

Although her Iranian passport expired in May 2003 and she had no intent to renew it, to comply with this requirement in September 2003 she sent a letter to the Iranian Interests Section of the Embassy of Pakistan to renounce any Iranian citizenship attributed to her by her marriage.

Her husband has many relatives in Iran who reside there and are citizens of Iran: his parents, five brothers, and two sisters. One brother is a retired colonel from the Iranian military who lives in Tehran and is now in the construction business; he no longer has any ties to the military. One of Applicant's husband's sisters teaches at a university in Iran, but just received her permanent residency status in the U.S. and intends to move to the U.S. His brothers all work in the private sector and have no ties to the government of Iran. Two of her husband's brothers now live in the U.S., and they are U.S. citizens. Applicant and her husband see the U.S. brothers every few months.

Her father-in-law is in poor health and has been bedridden for ten years; her mother-in-law is a homemaker. Applicant's husband supplies his father's medicine for his asthma. He talks to his mother every month.; he has little contact with his brothers in Iran. Applicant has minimal contact with her husband's family in Iran by telephone as she has only learned only a few words of Pharsi. She does not believe any of her husband's family in Iran knows anything about her work.

Applicant has no intent ever to return to Iran to see her husband's family because of the kind of work she now does and also because she is more concerned now of the problems she might face in Iran were she to travel there. She is not active with the Iranian community in the U.S. and does not practice any religion.

Applicant has never been approached by any Iranian interests to disclose information about her activities in the U.S. If she were approached, she would contact her Facility Security Office (FSO), the FBI, or someone involved in security. Her allegiance is solely to the U.S. as her parents, siblings, and children are in the U.S. Applicant in September 2003 wrote to the Iranian interests section of the Embassy of Pakistan to renounce, relinquish and surrender any an all claims

to citizenship under the laws of the Islamic Republic of Iran. She intends to remain solely a citizen of the U.S.

Applicant's husband came from Iran to the U.S. in 1977 to get a graduate degree at a university in State #2 and then transferred to a university in State #1. He received his Ph.D. from another university in State #1 and chairs an engineering department there. He became a U.S. citizen in 1988. He has consulted for the U.S. military and held a security clearance in 1992 which he retained until the project was completed. Applicant's husband maintains his Iranian passport in order to go visit his family in Iran. His last visit was in 1998 to visit his family. He has no property in Iran; he owns property in the U.S.; and his ties are now to the U.S.

Personal Conduct

When completing her 2000 SF 86 form, Applicant misunderstood Question 15. She had fully disclosed in answer to Question 14, the circumstances that led her to obtain an Iranian passport in 1992. However, Applicant failed to provide a "Yes" answer in response to Question 15 and give notice that she had renewed her Iranian passport in 1998. Although she knew she had an active passport in 1992, she did not list the 1992 passport on the form as she did not believe it fell within the seven year time frame in the question. She did not consider the 1998 passport as "active" as she had not used it.

However, when Applicant was asked to bring her Iranian passport to the Defense Security Service (DSS) interview in February 2001, she brought the 1998 passport. She had no intent to hide the fact that she had an Iranian passport. The DSS agent observed that the 1998 Iranian passport was still valid. In 2002 Applicant was asked to resubmit her security form, so she signed a re-printed SF 86 form which was identical to her 2000 SF 86 form.

References

Applicant's neighbor for seven years testified on her behalf that she has never observed anything that would suggest that Applicant would prefer another government to that of the U.S.

The executive manager of Company #1 who has worked there for two years sees Applicant on a daily basis as he has supervised her for the past year. Previously he was a program manager for various military and defense programs. He is a West Point graduate who has held a security clearance since 1980. He recommended Applicant for a security clearance. He is aware that her husband has family members in Iran, but attested that Applicant's husband is a well-respected professor at a state university. This manager had no concerns of any improper transfer of information to the family in Iran. He observed that Applicant is a great worker and has contributed significantly to projects for Company #1.

Another supervisor of Company #1 testified that Applicant's husband was his adviser for his master's degree; he met Applicant in 2000. He has never observed any preference for a foreign country by Applicant. He has supervised Applicant on two different tasks where she has performed extremely well. He recommended her for a security clearance as he has never observed any behavior that would indicate that she was a threat.

Another supervisor of Company #1 who has known her for three years and worked with her on a daily basis for two years recommended her for a security clearance. He also observed she makes excellent technical contributions; he did her appraisal for her first two years and gave her outstanding appraisals. He did not think she would be easily pressured as she is very assertive.

A division manager of Company #1 has know Applicant since 1994 and recommended her for a security clearance. For two or three years they worked on the same project and were co-workers; he saw her frequently. However, he had no knowledge of her husband's family in Iran. If she were to be granted a security clearance, he would be her supervisor on the project.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions

that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline C - Foreign Preference⁽³⁾

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.

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

- (1) the exercise of dual citizenship;
- (2) possession and/or use of a foreign passport⁽⁴⁾;

Conditions that could mitigate security concerns include:

- (4) Individual has expressed a willingness to renounce dual citizenship.

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: (1) not citizens of the United States or (2) 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:

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;

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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;
3. Contact and correspondence with foreign citizens are. . . infrequent;

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, 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, or falsification 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;

Conditions that could mitigate security concerns include:

2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Guideline C - Foreign Preference

Applicant has mitigated security concerns over her possible foreign preference which arose from her active exercise of dual citizenship in 1992 in Iran after her U.S. passport was seized as she was married to an individual born in Iran and she had to obtain an Iranian passport in order to be able to exit the country. While dual citizenship is not prohibited per se, any conduct indicating possible foreign preference does raise a security concern where such action would increase the risk of an individual being influenced by the needs, desires, or aims of a foreign nation. While Applicant in 1998 renewed her foreign passport should she want to travel again to Iran with her husband to visit his family, she did not know at the time that to hold and use a foreign passport would raise U.S. security concerns as she did not yet work for a defense contractor then. Also, this policy guidance was not issued until August 2000.

While the new policy allows no mitigating factor for an applicant's use of a foreign passport mandated by requirements of foreign law, I note that at the time Applicant did not seek the Iranian passport of her own free will. Indeed, before traveling to Iran in 1992, Applicant properly obtained a visa to Iran in her U.S. passport and arrived there on her U.S. passport. She only obtained the Iranian passport when she was forced to by Iranian law in order to leave the country. She has never again journeyed to Iran nor again used her foreign passport which expired in May 2003. To her credit Applicant voluntarily complied with DoD guidance after she became aware of the proper avenue for individuals to take corrective action to mitigate this security concern. Not only did she maintain that her principal preference is for the US, she surrendered her expired foreign passport in October 2003 by submitting it as evidence in her security hearing. Applicant now falls within mitigating condition (MC) 4 as she not only expressed her willingness to renounce her dual citizenship (obtained by Iranian law from her marriage to her Iranian husband), she has written to the Iranian interests section to renounce, relinquish and surrender any and all claims to citizenship under the laws of the Islamic Republic of Iran. She intends to remain solely a citizen of the U.S. Further, she surrendered her foreign passport to fully comply with DoD policy guidance which prohibits use of foreign passports.

Thus, after reviewing all of the evidence in the record and considering all of the security policies, including the August 16, 2000, policy clarification memorandum, I conclude Applicant has met the DoD mitigation sufficiently to indicate her clear preference for the United States. Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). While acts indicative of foreign preference warrant careful scrutiny, I conclude SOR paragraph 1 and subparagraphs 1.a. and 1.b. for Applicant.

Foreign Influence

Applicant has mitigated the Government's security concerns over possible foreign influence under Guideline B raised by Applicant's close ties of affection to citizens of a foreign country: her husband has dual citizenship with the U.S. and

Iran; his parents and several siblings reside in and are citizens of Iran. While I have considered these foreign influence concerns, I conclude Applicant has presented sufficient evidence to meet the very heavy burden⁽⁵⁾ those circumstances present. These security concerns are mitigated by the fact that Applicant has not in the past been subject to pressure. Applicant, along with her many references who know her character, anticipate she would resist and report any future pressure. Any risk of foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable as her husband's family there have no ties to the government of Iran. Moreover, Applicant made evident that if there were any evidence of any coercion or pressure on himself or the family that she would immediately report such coercion to the proper authorities and her security manager.

Applicant's husband's family in Iran have no ties to their government. Also, two of his brothers now live in the US and are U.S. citizens. One sister just received her permanent resident status in the U.S. and is in the process of immigrating to the US. Thus, I conclude that there is no substantial likelihood that they would be subject to duress and thus exercise foreign influence over Applicant. Given Applicant's history of responsible conduct as evidenced by her many favorable references from Company #1 and from her neighborhood, I conclude it is highly unlikely that any of the family members living in the US or in Iran would be subject to pressures or create a situation that could result in the compromise of classified information. Further, all her references attest to her good character and excellence at work and conclude Applicant would not be vulnerable to duress merely because of these distant family ties of her husband's family in Iran. While acts indicative of foreign influence warrant careful scrutiny, contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.e. in Applicant's favor.

Personal Conduct

While Applicant failed to reveal her Iranian passport renewal in 1998 on her 2000 SF 86, I find her explanation credible that she had no intent to falsify and that she simply misunderstood Question 15. Applicant had fully disclosed all of the circumstances that led to her obtaining an Iranian passport in 1992 in answer to another question. Further, she readily disclosed this 1998 Iranian passport to the DSS in the interview voluntarily and without confrontation. Thus, Applicant has rebutted and overcome these personal conduct security concerns. Even if one were to include she falsified by this omission, she demonstrated that she has mitigated this concern as there is evidence in the DSS statement that Applicant made prompt, good-faith efforts to correct the omissions before being confronted with the facts. Hence, she has met MC 2 and MC 3. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 3.a. under SOR Paragraph 3.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline C FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2. Guideline B FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: For Applicant

DECISION

In light of all 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Authorities in Iran often confiscate passport of U.S./Iranian dual nationals upon arrive. (See O.N. II)
3. See also the DoD August 16, 2000, Policy Clarification Memorandum to clarify the policy on Foreign Preference, Guideline C and stated, in part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises 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 unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United State Government. Modification of the Guideline is not required.

4. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport"
5. Since the Government presented evidence of the hostile nature of the relationship between the U.S. and Iran, the Appeal Board in ISCR Case No. 01-26893 issued on October 16, 2002, outlined a standard that when there is hostility between a foreign government and the U.S. this circumstance places "a very heavy burden on Applicant " to show that family ties there do not pose a security risk.