

DATE: April 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23663

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant obtained and still retains a passport of Iran through her citizenship of that country before becoming a U.S. citizen. She has used that passport to travel to Iran. She has made no effort to surrender the passport. She also has relatives in Iran. Applicant was apprised of Department of Defense (DoD) policy set forth in the "Money Memorandum" of August 16, 2000, and has not complied with its requirements. Clearance denied.

STATEMENT OF THE CASE

On October 8, 2002, the 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, continued, denied, or revoked.

In a sworn written statement, dated November 25, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on February 12, 2003. A complete copy of the file of relevant material (FORM), consisting of seven documents, was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She chose not to do so. The case was assigned to, and received by, this Administrative Judge on April 21, 2003.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to foreign preference and foreign influence under Guidelines C and B. Those admissions are incorporated herein 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.

Appellant holds a passport of Iran that she used in 2001, has taken overt actions in the exercise of dual citizenship, and refused to renounce that foreign citizenship. Applicant's immediate family, and other persons to whom she may be bound by affection, influence, or obligation, are not United States citizens or may be subject to duress. These relatives are her husband and sister both of whom are dual citizens of Iran and the United States as well as an aunt and mother-in-law who are citizens of and reside in Iran.

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)

"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. The possession of a foreign passport is a strong indicator of such a preference.

On August 16, 2000 the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASDC³I) issued a memorandum, the "Money Memorandum", clarifying certain issues in cases involving possession and/or use of a foreign passport. The memorandum precludes the issuance of a security clearance to one holding a passport issued by another country unless the holder surrenders it or obtains approval for its use or retention from the appropriate agency of the U.S. Government.

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

Such security concerns could be mitigated by a determination "that 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 individual to choose between loyalty to the person(s) involved and the United States." Directive, ¶ E2.A2.1.3

CONCLUSIONS

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, 2001 DOHA LEXIS 59 at 33-34 (App. Bd. Feb. 8, 2001). Mitigating factors are not applicable. She refuses to renounce her Iranian citizenship and surrender her Iranian passport.

Applicant failed to offer any evidence to mitigate the concerns raised by the Iranian citizenship of her relatives. Applicant has failed to offer any evidence to show that no risk was involved in that relationship. By failing to mitigate these security concerns, Applicant has failed to demonstrate that is clearly consistent with national security to grant her the clearance.

FORMAL FINDINGS

Formal Findings as required by the Directive, ¶ E3.1.25), are as follows:

Paragraph 1. Guideline C : AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge