

DATE: June 20, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24544

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is unwilling to renounce his Iranian citizenship and surrender his expired Iranian passport, a passport he can easily renew for an additional five years. He is unwilling because of the possible repercussions his family may suffer in Iran. He has traveled to Iran, using his Iranian passport, on two occasions subsequent to obtaining his U.S. citizenship. His parents, a brother and four sisters are citizens of and reside in Iran. His 65 year father is retired from a private medical clinic. His 63 year old mother is a housewife. His brother owns a private taxi service, and his four sisters are housewives. Although there is no evidence that any of the Applicant's Iranian family member are agents of any foreign government, their presence in Iran can be exploited by the Iranian government. Clearance is denied.

STATEMENT OF THE CASE

On March 3, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on March 24, 2003.

The case was received by the undersigned on April 22, 2003. A notice of hearing was issued on April 26, 2003, and the case was heard on May 16, 2003. The Government submitted documentary evidence. Testimony was also taken from the Applicant. The transcript was received on June 2, 2003. The issues raised here are whether the Applicant's foreign preference and possible foreign influence militate against the granting of a security clearance. [The Applicant admits the factual basis of all of the allegations, except for subparagraph 1.d. as to the renewal of his Iranian passport.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 42 years of age, has a master's Degree in Electrical Engineering, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline C - Foreign Preference

The Applicant was born in Iran, but came to the United States in 1986 to attend college (Transcript (TR) at page 29 line 24 to page 32 line 7). With the fall of the Shah of Iran, the Applicant remained in the U.S. and became a U.S. citizen in 1996.

1.a.~1.d. The Applicant is a dual national; and because of concerns for the safety of his immediate family who remain in Iran, he has chosen not to renounce his Iranian citizenship (TR at page 18 line 16 to page 19 line 9, at page 36 lines 4~8, at page 50 lines 5~21, and Applicant's Exhibit (AppX) D). Subsequent to becoming a U.S. citizen, the Applicant renewed his Iranian passport, and has traveled to Iran using that passport on two occasions, in 1996 and again in 1998 (TR at page 18 line 17 to page 20 line 19, and at page 38 line 14). That passport has expired, but can be renewed for an additional five years with little difficulty (*id*). Due to concerns for the safety of his Iranian family, he has also chosen not to surrender his Iranian passport (*ibid*, and AppX D).

Guideline B - Foreign Influence

2.a.~2.c. The Applicant's Iranian father is 65 years of age, and is retired from a private clinic (TR at page 20 line 20 to page 21 line 20, at page 41 line 12 to page 43 line 21, and at page 45 lines 15~20). The Applicant's Iranian mother is a 63 year old housewife (*id*). The Applicant's five siblings, one brother and four sisters, are also citizens of and residents of Iran (*ibid*). The Applicant's brother owns a private taxi service, and his four sisters are housewives (TR at page 43 lines 5~19, and at page 54 lines 15~20).

Mitigation

The Applicant's Assistant Program Manager and two of the Applicant's fellow employees think highly of the Applicant and all recommend him for a position of trust (AppXs A~C).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Foreign Preference

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns:

None

Foreign Influence

Condition that could raise a security concern:

1. An immediate family member . . . is a citizen of . . . a foreign country;

Conditions that could mitigate security concerns:

None

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct or situation, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference, or who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

The Applicant is a dual citizen of Iran and of the United States; but because of concerns regarding the safety of his immediate family who remain in Iran, he chooses not to renounce his Iranian citizenship. Despite being appraised of the *Money Memo* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudication Guidelines," dated September 1, 2000) (Government Exhibit (GX) 6), he also chooses not to surrender his Iranian passport. Guideline C is therefore found against the Applicant.

As to his parents and siblings who are citizens of and reside in Iran, although the Applicant has demonstrated that his immediate family members "are not agents of a foreign power," by his own admission they are "in a position to be exploited by a foreign power." Thus the first mitigating condition under Foreign Influence is not applicable here; and as such, Guideline B is also found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his foreign preference and foreign influence. The Applicant has thus not met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge