

DATE: December 19, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-24566

**ECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Candace L. Le'i, Esquire, Department Counsel

**FOR APPLICANT**

-----, Personal Representative

**SYNOPSIS**

The Applicant has renounced her Iranian citizenship and returned her defaced Iranian passport to the proper authorities in compliance with the *Money emorandum* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudication Guidelines," dated September 1, 2000). Almost all of the Applicant's family have emigrated from Iran. The Applicant is not subject to coercion concerning these relatives. itigation is shown. Clearance is granted.

**STATEMENT OF THE CASE**

On February 22, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on April 13, 2005, and requested a hearing. The case was received by the undersigned on June 13, 2005, and a Notice of Hearing was issued on July 6, 2005. An Amended Notice of Hearing was issued on July 14, 2005.

A hearing was held on August 15, 2005, at which the Government presented ten documentary exhibits (Government Exhibits 1-10). Testimony was taken from the Applicant, who called one additional witness, and also submitted one hearing exhibit (Applicant's Exhibit A). The Applicant later submitted five post-hearing exhibits (Applicant's Exhibits B-F). Applicant's Exhibit B consists of a letter from the Applicant's security officer dated August 30, 2005, and photocopies of the Applicant's and her spouse's defaced Iranian passports. Applicant's Exhibit C is a Power of Attorney related to the Applicant's spouse's property in Iran, dated August 31, 2005. Applicant's Exhibit D is a packet of

documents showing that the Applicant, her spouse and her daughter had renounced their Iranian citizenship, and proving that the Applicant's child is an American citizen. Applicant's Exhibit E is a photocopy of the Applicant's spouse's Iranian passport. Applicant's Exhibit F is a copy of the Applicant's Iranian passport. The transcript was received on August 22, 2005.

### **RULINGS ON PROCEDURE**

On June 21, 2005, the Department Counsel submitted a "Motion to Amend the Statement of Reasons." The motion added a second paragraph to the SOR, alleging concerns under Guideline C, Foreign Preference. It contained one allegation, subparagraph 2.a., "You exercise dual citizenship with both Iran and the United States." Applicant had no objection to the amendment, and also admitted the allegation. The SOR was amended. (Transcript at 6-7.)

Based on testimony that was given during the hearing, Department Counsel moved to amend the SOR by adding a subparagraph 2.b., "You and your husband have active Iranian passports as of August 15, 2005." Applicant had no objection to the amendment, and also admitted the allegation. The SOR was amended. (Transcript at 51-53.)

### **FINDINGS OF FACT**

The Applicant is 42, married and has a Bachelor's degree. She is employed by a defense contractor as an electrical engineer, and she seeks to obtain a DoD security clearance in connection with her employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline B: Foreign Influence). The Government alleges in this paragraph that the Applicant may have foreign connections which potentially make her vulnerable to coercion, exploitation or pressure. The Applicant admitted subparagraphs 1.a., 1.b., 1.e., and 1.g. Those admissions are deemed findings of fact.

The Applicant was born in Iran in 1963. She married her husband, also an Iranian national, in 1983. The Applicant moved to the United States in 1988, and she became a naturalized American citizen in September 2000.

1.a. The Applicant's husband, as stated above, was born in Iran. He became a naturalized American citizen in 1999. (Government Exhibit 1 at Question 8.) On August 24, 2005, he sent a statement to the Iranian Interests Section at the Pakistani Embassy renouncing his Iranian citizenship. (Applicant's Exhibit D at 2.)

1.b. The Applicant's daughter was born in Iran in 1986. She is a naturalized American citizen as evidenced by a copy of her American passport submitted by the Applicant. (Applicant's Exhibit D at 5.) The daughter has never traveled to Iran, and also submitted a statement to the Iranian Interests Section at the Pakistani Embassy renouncing her Iranian citizenship. (Applicant's Exhibit D at 4.)

1.c. and 1.d. The names of the Applicant's siblings are set forth in her Security Clearance Application. (Government Exhibit 1 at question 9.) They will be discussed using the entry numbers by which they are identified in the exhibit. Entries 1 through 4 are used for the Applicant's parents and in-laws. Entries 7 and 9 are siblings of the Applicant's husband.

Sibling 5. This is the Applicant's oldest sibling, a sister. She is 63 and lives in Iran. (Transcript at 33.) The Applicant is not close to her, given the difference in their ages. They correspond once or twice a year. (Transcript at 45-48.)

Sibling 6. This sister of the Applicant is 60. She now lives in the United States as a permanent resident. (Transcript at 33-34.) The Applicant is also not close to this sister, given the difference in their ages. (Transcript at 45-48.)

Sibling 8. The Applicant's oldest brother is 58. He now lives in the United States as a permanent resident. (Transcript at 34-35.) The Applicant is not close to this brother, given the difference in their ages. (Transcript at 45-48.)

Sibling 10. The Applicant's next oldest brother is 53. He is a citizen of the United States. (Transcript at 35.) ) The Applicant is not close to this brother, given the difference in their ages. (Transcript at 45-48.)

Sibling 11. This brother of the Applicant is 50. He lives in Iran, but has permanent residency status in Canada. He is also attempting to obtain permanent residency status in the United States. (Transcript at 32-33, 35.) This brother is waiting for the Iranian government to give their approval for his family to leave Iran. Once that approval is obtained, they will leave. (Transcript at 53-54.)

Sibling 12. This brother of the Applicant is 48. He currently lives in Canada as a permanent resident. (Transcript at 35-36.)

Sibling 13. The Applicant's youngest brother is 45. He lives in the United States as a permanent resident. (Transcript at 36.)

1.e. The Applicant's mother-in-law is 80. She is in frail health and lives in Iran.

1.f. The Applicant's spouse owns the condominium in which his mother lives. The condominium is worth approximately \$10,000. The Applicant's spouse has signed a power of attorney granting his brother who lives in Iran authority over this piece of property. (Applicant's Exhibit C.) The Applicant and her husband have about \$1.5 million in assets here in the United States. (Transcript at 68-69.)

1.g. The Applicant admits traveling to Iran in 1994, 2000 and 2004. Her use of an Iranian passport for the last of these trips will be discussed under subparagraph 2.b., below.

Paragraph 2 (Guideline C: Foreign Preference). The Government alleges in this paragraph that the Applicant has engaged in actions which show a preference for another country (Iran) over the United States. The Applicant admitted the factual allegations of subparagraphs 2.a. and 2.b. Those admissions are deemed findings of fact.

2.a. The Applicant and her husband have renounced in writing their Iranian citizenship. (Applicant's Exhibit D.) At the hearing, the Applicant and her husband testified concerning their problems with the current Iranian government. They have no desire to return to Iran and are very happy to live in the United States and be American citizens. (Applicant's Exhibit A, Transcript at 19-29, 56-57.)

2.b. The Applicant and her spouse renewed their Iranian passports in 2003 in order to travel to Iran for a wedding. They were informed at the hearing of the impact of the Money Memorandum (Government Exhibit 10). After the hearing the Applicant, and her husband, returned their defaced Iranian passports to the Iranian Interests Section at the Pakistani Embassy. (Applicant's Exhibit B.)

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

a. The nature, extent and seriousness of the conduct

- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections and/or shown a preference for another country over the United States that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections which could cause a security concern (Guideline B); and that the Applicant was a dual citizen of Iran and the United States, and that she had a valid Iranian passport (Guideline C).

The Applicant, on the other hand, has successfully mitigated the Government's case. Regarding Guideline B, the factual situation has changed a lot since the Applicant applied for a security clearance in 2001. First of all, the Applicant, her spouse and her daughter have all submitted statements to the Iranian government renouncing their Iranian citizenship. In addition, only two of the Applicant's siblings remain in Iran. The other three have all emigrated legally to the United States or Canada. Of the two siblings remaining in Iran as of the date of the hearing, only her oldest sibling, a sister, intended to remain in Iran. The Applicant is not close to this sibling. None of her family members who are still Iranian

citizens are agents of the Iranian government. In fact, the evidence indicates that the Applicant's family, and that of her spouse, are not friendly to that government. Under the particular circumstances of this case, the contacts between the Applicant and her husband, and their remaining relatives in Iran, are not of a closeness to affect her security worthiness.

The Applicant has also mitigated the effect of her husband owning the condominium that her mother-in-law occupies in Iran. First, the Applicant's spouse has signed a power of attorney to his brother to control that piece of property. In addition, that piece of property is only worth \$10,000. This is less than 1% of the \$1,500,000. in assets which the Applicant and her spouse have in the United States.

The record shows that the Applicant has been to Iran three times. The last time was in 2004. She understands that revoking her Iranian citizenship and returning her Iranian passport means that she will probably not be able to travel to Iran in the near future.

Disqualifying Condition 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*) is the only one which applies on its face. Under the particular facts of this case, the following Mitigating Conditions apply: E2.A2.1.3.1. (*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*), and E2.A2.1.3.5. (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*).

Turning to Guideline C, the Applicant has renounced her Iranian citizenship and returned her defaced Iranian passport to the appropriate authorities. This action brings her within the requirements of the *Money Memorandum*. In fact, the Applicant's spouse and daughter have also renounced their Iranian citizenship and the husband has returned his passport as well, actions which are not required, but which show their desire to mitigate the Government's concern.

Disqualifying Condition E2.A3.1.2.1. applies, (*Possession and/or use of a foreign passport*). However, under the particular facts of this case, Mitigating Conditions E2.A3.1.3.1. (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*), and E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*) also apply.

I have carefully considered the evidence of record, especially the fact that the Applicant is from Iran. The evidence shows that the Applicant is a patriotic American citizen. She is knowledgeable about security and has taken steps to reduce her vulnerability. Using the whole person standard, the Applicant has mitigated the security significance of her foreign connections and alleged foreign preference. She is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. through 1.g.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraphs 2.a. through 2.b.: For the 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.

Wilford H. Ross

Administrative Judge