

KEYWORD: Foreign Influence; Foreign Preference; Personal Conduct

DIGEST: Applicant failed to mitigate foreign influence concerns raised by members of his immediate family who live, spend considerable time in, or are residents of Iran. And I am prohibited from granting him a clearance because he possesses a foreign passport. Clearance is denied.

CASENO: 02-26232.h1

DATE: 08/25/2004

DATE: August 25, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26232

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate foreign influence concerns raised by members of his immediate family who live, spend considerable time in, or are residents of Iran. And I am prohibited from granting him a clearance because he possesses a foreign passport. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 14 January 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 5 February 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 20 May 2004. On 22 June 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 1 July 2004.

RULINGS ON PROCEDURE

During the hearing, to conform the SOR to the evidence, Department Counsel moved to amend the SOR as follows:

3. When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., then he may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1.

a. You possess an Iranian passport and used it to travel to Iran.

Applicant had no objection and the SOR was so amended. I required Department Counsel to provide Applicant a copy of the "Money Memo" [\(2\)](#) and kept the record open until 12 July for him to provide any additional materials to mitigate the allegations. He provided a letter from the president of the company that employs him (Ex. A), a letter from Applicant (Ex. B), and a copy of his state driver's license (Ex. C). Without objection from Department Counsel, I admitted the three exhibits.

FINDINGS OF FACT

Applicant is a 41-year-old installation manager for a defense contractor. Applicant was born and raised in Iran. In 1986, he left Iran and went to live in India. In 1989, he moved to Canada as a Landed Immigrant. In December 1993 or January 1994, Applicant applied for Canadian citizenship. On 10 May 1994, he entered the U.S. and became a permanent resident.

In January 1995, Applicant attempted to enter Canada as a returning Canadian resident. At the border, he was denied entry to Canada when it was determined he was both a Landed Immigrant in Canada and a permanent resident alien in the U.S. He was returned to the U.S. and subsequently served with an Order to Show Cause in Deportation Proceedings charging him with fraud in obtaining his Immigrant Visa in that he had no intention of living in the U.S. His alien registration card was confiscated. Applicant reapplied for admission into Canada and was admitted. He became a Canadian citizen on 15 January 1995. On 2 arch 1995, Applicant returned to U.S. from Canada as a non-immigrant visitor by presenting his Canadian citizenship card as identification. Ex. 3 at 11. Subsequently, Applicant became a naturalized U.S. citizen on 26 October 2001. *Id.* at 1. He does not have a U.S. passport. Ex. 1 at 1.

Applicant's parents immigrated to the U.S. in 1985. They are permanent U.S. residents. Applicant does not expect them to become U.S. citizens because they do not speak English well. They have been in Iran the last couple months caring for Applicant's ill grandmother. Tr. 15-16. They normally travel to Iran once a year and stay for various periods up to nine months. Tr. 16. They own a house in Iran. When they are in the U.S. they normally stay with one of their sons. Recently, Applicant obtained an Iranian passport so he could go visit his ill grandmother.

All of Applicant's siblings reside in the U.S., except his sister, who lives in Iran. Two of his brothers are also U.S. citizens. Answer.

Applicant completed his security clearance application on 12 March 2002. Question 9 required him to list his relatives and associates. Applicant listed his mother and father, but not his sister and three brothers. Question 26 required Applicant if, in the previous seven years, he had been arrested, charged, or convicted of any offenses not listed in

previous questions. Applicant answered no and did not list being charged with an immigration violation in March 1995.

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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline B--Foreign Influence

In the SOR, DOHA alleged Applicant's parents are citizens of Iran (§ 1.a); they travel to Iran often (§ 1.b); they own a house in Iran (§ 1.c); Applicant's sister is a citizen resident of Iran (§ 1.d); he contacts his sister by telephone once or twice a year (§ 1.e); two of Applicant's brothers are citizens of Iran (§ 1.f); and Applicant has weekly contact with those two brother (§ 1.g). A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. 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.

The Government established by substantial evidence and Applicant's admissions all or portions of each of the allegations in the SOR, except ¶¶ 1.c. Members of Applicant's immediate family are citizens or residents of a foreign country. DC E2.A2.1.2.1. His parents spend considerable amount of time each year at their home in Iran and Applicant stays in touch with his parents and siblings, as one would expect.

It is a mitigating condition if the immediate family members are not agents of a foreign power and are not in a position to be exploited by a foreign power in a way that could force the applicant to choose between loyalty to the family members and loyalty to the U.S. Although Applicant's family members are not agents of a foreign power, his parents and sister are in a vulnerable position living or staying for long periods in Iran. The U.S. Government does not have diplomatic relations with Iran and recent tensions have "increased the potential threat to U.S. citizens and interests abroad posed by those who oppose U.S. policy." Ex. 5. I find against Applicant.

Guideline E--Personal Conduct

In the SOR, DOHA alleged Applicant falsified his SCA by deliberately omitting the names of his sibling (§ 2.a) and his being charged with an immigration violation (§ 2.b). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence that Applicant failed to disclose in his SCA his lien, his unpaid judgments, his repossessions, and delinquent debts. Proof Applicant omitted this information from his SCA shifted the burden to Applicant to explain the omissions sufficiently to negate a finding of knowing and deliberate falsification. *See* ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

After carefully listening and observing Applicant, I am satisfied that he did not deliberately falsify his SCA. There was no secret that he had a sister in Iran and brothers who were in the U.S. but still Iranian citizens. He just considered his parents as the immediate or primary members of his family. Likewise, I am convinced Applicant did not believe he was charged with a criminal offense. The evidence strongly suggests that, because he went before an immigration judge, only a civil offense was involved. I find for Applicant.

Guideline B--Foreign Preference

As amended, the SOR alleges Applicant possesses a foreign passport. ¶ 3.a. When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., then he may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1.

The evidence established Applicant has an Iranian passport. The possession and use of a foreign passport is a disqualifying condition. DC E2.A3.1.2.2. The use of the foreign passport after becoming a U.S. citizen is an exercise of dual citizenship. DC E2.A3.1.2.1. It is a mitigating condition for an applicant to express a willingness to renounce dual citizenship. MC E2.A3.1.3.4. Nevertheless, a clearance must "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 States Government." Memo. from Arthur L. Money, Asst Sec. Def. Command, Control, Communications, and Intelligence, to Directors of Defense Agencies, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline* (Aug. 16, 2000). I afforded Applicant 20 days in which he could take action to surrender his Iranian passport. He provided no evidence that he had done so. Accordingly, I find against Applicant on ¶ 3.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Paragraph 3. Guideline C: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).
2. Memo. from Arthur L. Money, Asst Sec. Def. Command, Control, Communications, and Intelligence, to Directors of Defense Agencies, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline* (Aug. 16, 2000).