KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is unable to successfully mitigate the foreign preference and foreign influence security concerns due to her connections or ties to Iran, a country hostile to the U.S. Clearance is denied.

CASENO: 03-19062.h1

DATE: 10/31/2005

DATE: October 31, 2005

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In re:

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SSN: ----------

Applicant for Security Clearance

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ISCR Case No. 03-19062

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## SYNOPSIS

Applicant is unable to successfully mitigate the foreign preference and foreign influence security concerns due to her connections or ties to Iran, a country hostile to the U.S. Clearance is denied.

## STATEMENT OF THE CASE

On November 10, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant.[(1)] The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B for foreign influence and Guideline C for foreign preference. In her Answer to the SOR, dated December 16, 2004, Applicant denied, partially denied, or neither admitted nor denied the SOR allegations. Also, her Answer was unclear on whether or not she desired a hearing.

This case was initially assigned to Administrative Judge Joseph Testan on February 17, 2005. Thereafter, on February 25th Applicant indicated she did not desire a hearing during a telephone conversation with Department Counsel.

On February 28, 2005, Department Counsel submitted his written case consisting of all relevant and material information that could be adduced at a hearing. This so-called File of Relevant Material (FORM) was mailed to Applicant and received by her on March 14, 2005. In the FORM at page 2, Department Counsel indicated he had spoken with Applicant on February 25, 2005, and that Applicant confirmed her request that her case be decided without a hearing. Applicant did not submit any information within the 30-day period after receiving the FORM. Given her lack of response to the FORM, I presume Applicant did not desire a hearing. The case was assigned to me on May 11, 2005. Issuing a decision was delayed due to a heavy caseload.

## FINDINGS OF FACT

After a thorough review of the record evidence, I make the following findings of fact:

Applicant is a 29-year-old married woman who was born in Iran to Iranian parents in 1976. She immigrated to the U.S. in July 1997 based on her marriage to a native-born U.S. citizen; she wed her husband in November 1996 in Iran. She became a naturalized U.S. citizen in June 2001. She was awarded a bachelor's of science degree in computer science from a U.S. university in December 2001. She has been employed since June 2002 as a software engineer for a major aerospace company engaged in defense contracting. She is seeking to obtain a security clearance for her employment and submitted an application in October 2002.

Applicant's parents are citizens of Iran and until recently were residents of Iran. Applicant traveled to Iran in 2000 to visit her family. Her parents immigrated to the U.S. via Applicant's sponsorship and they are now legal residents of the U.S. Applicant's brother and his wife are citizens of and residents in Iran. Applicant speaks to her brother by telephone about once a month or so. As of January 2003, her brother was a student.

Applicant also has extended family members in Iran, such as a grandmother, cousins, aunts, and uncles. They are all citizens of and residents in Iran. In her Answer to the SOR, Applicant denies any contact whatsoever with her extended family members in Iran. And she also points out she has many extended family members in the U.S.

In January 2003, Applicant was interviewed during her background investigation. The interview produced a sworn statement wherein Applicant detailed her Iranian background, her immigration to the U.S., her family ties to Iran, and so forth. Concerning dual citizenship with the U.S. and Iran, Applicant explained she was continuing to hold Iranian citizenship because her parents and brother where then living in Iran. Concerning her possession of an Iranian passport, Applicant explained the Iranian passport she used to immigrate to the U.S. had expired in February 2002, and she had renewed the passport in December 2002. Applicant explained her future intentions on the subjects of dual citizenship and the Iranian passport as follows:

I will cancel my Iranian passport when my parents and brother are allowed to enter the United States. I will also give up my dual citizenship with Iran. I will not have to worry about visiting Iran to see them. I only had it [the passport] so I could visit them. You cannot use an American Passport to visit Iran. I would cancel my Iranian Passport now, but I am afraid to, the Iranians may harm my family, parents, brother or they might instigate repercussions against them and not let them leave Iran. As soon as they arrive safely in the United States, I will immediately take steps to cancel my foreign passport as well as my dual citizenship.

In her Answer to the SOR, she indicated that she had given up her Iranian passport, she had "denounced" (presumably she meant renounced) her Iranian citizenship, and she was seeking written confirmation from Iranian authorities. She stated she no longer feared retaliation. She pointed out her trip to Iran in 2000 was before she became a U.S. citizen and before she was working for a defense contractor. Besides her statements, Applicant has not presented any documentary evidence or information confirming that she has indeed surrendered her Iranian passport and taken steps to renounce her Iranian citizenship.

As requested by Department Counsel, I take administrative or official notice of the certain facts concerning Iran as follows:

The February 11, 1979, fall of the Shah of Iran, a key U.S. ally, opened a long rift in U.S.-Iranian relations. On November 4, 1979, radical students seized the U.S. Embassy in Tehran and held its diplomats hostage until minutes after President Reagan's inauguration on January 20, 1981. The United States broke relations with Iran on April 7, 1980, and the two countries have had no official dialogue since. In the U.S., the Iranian Interest Section is located in the Embassy of Pakistan. The U.S. protecting power in Iran is Switzerland. The U.S. Government prohibits most trade with Iran. The U.S. Government has special concerns about four areas of Iranian behavior: (1) its efforts to acquire weapons of mass destruction; (2) its support for and involvement in terrorism; (3) its support for violent opposition to the Middle East peace process; and (4) its dismal record of human rights.

**POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.[(2)] Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

In August 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC3I), issued a policy memorandum--the so-called Money Memorandum, because it is signed by Assistant Secretary Arthur L. Money--clarifying the application of the foreign preference security guideline for cases involving possession and/or use of a foreign passport. In pertinent part, the Money Memorandum "requires that any clearance be

denied or revoked unless the applicant surrenders the foreign passport or obtains approval for its use from the appropriate agency of the United States Government." A copy of the Money Memorandum was provided to Applicant when she received the SOR. The Money Memorandum is binding or controlling Defense Department policy that I am required to apply, and it is beyond my authority to assess the wisdom or effectiveness of this policy, as that is the function and responsibility of policy-makers.

## BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.[(3)] There is no presumption in favor of granting or continuing access to classified information.[(4)] The government has the burden of proving controverted facts.[(5)] The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.[(6)] The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.[(7)] "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."[(8)] Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.[(9)] In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[(10)]

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[(11)] Under *Egan,* Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

## CONCLUSIONS

### *1. Guideline C-Foreign Preference*

Under Guideline C, a security concern may exist when a person acts in such a way as to indicate a preference for a foreign country over the U.S. In particular, the exercise of dual citizenship raises a security concern because the active exercise of foreign citizenship may indicate a preference for that foreign country over the U.S. Of course, dual citizenship by itself is not automatically a security concern. Absent the exercise of dual citizenship or indicia of some

affirmative action demonstrating foreign preference, mere possession of foreign citizenship by virtue of birth does not fall within the scope of Guideline C.

Here, based on the record evidence as a whole, the government established its case under Guideline C. Applicant exercised dual citizenship by possessing and renewing an Iranian passport after obtaining U.S. citizenship. By doing so, Applicant demonstrated a preference for Iran. Under these circumstances, DC 1[(12)] and DC 2[(13)] apply against Applicant. In addition, given the state of the record, I cannot conclude she has complied with the Money Memorandum, which requires a clearance be denied or revoked based on possession of a foreign passport. Applicant's statement that she has given up her Iranian passport, standing alone, is insufficient evidence to prove that she has surrendered the Iranian passport.

Turning to the mitigating conditions under Guideline C, MC 1[(14)] applies because her dual citizenship is based on her birth in a foreign country.[(15)] MC 2[(16)] does not apply because the disqualifying behavior discussed above took place after she became a U.S. citizen. MC 3[(17)] does not apply because there is no indication that Applicant's actions were sanctioned by the United States. Finally, MC 4[(18)] applies because Applicant is willing to renounce her Iranian citizenship.

Applicant has lived in the U.S. since 1997, became a U.S. citizen, obtained a college education in computer science from a U.S. university, and is now working in her chosen field. She is married to a native-born U.S. citizen, and it certainly appears that her life is firmly rooted in the U.S. But the record evidence is ambiguous and not sufficient to prove that she surrendered her Iranian passport as required by the Money Memorandum. On this basis alone, she has failed to successfully mitigate the security concern. Accordingly, Guideline C is decided against Applicant.

***2. Guideline B-Foreign Influence***

Under Guideline B, a security concern 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 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. In addition, common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service.

Here, based on the record as a whole, the government established its case under Guideline B. Applicant has family ties to Iran, as evidenced by her parents who are citizens of Iran and who were until recently residents in Iran. Her brother and his wife are citizens of and residents in Iran. She also has extended family members in Iran. The strength of the ties is also demonstrated by Applicant's trip to Iran in 2000 to visit her family. These circumstances raise a security concern

under DC 1.[(19)] The remaining DC do not apply based on the facts and circumstances here.

I reviewed the mitigating conditions under Guideline B and conclude that only MC 5[(20)] applies. Applicant receives some credit under MC 5 because she does not have business or financial interests in Iran. The remaining MC do not apply based on the facts and circumstances here. In particular, I gave consideration to C 1,[(21)] but it does not apply. It appears that none of the family members are agents of the Iranian government or any other foreign power.[(22)] But that does not end the analysis, as Applicant must show her family members in Iran are not in position to be exploited.

In deciding if an applicant has met the second prong of MC 1, it is proper to consider how the foreign country at issue is governed. The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes it is nonsensical to treat North Korea as if it were Norway. Here, we know Iran is hostile to the U.S. and is ruled by a government with a dismal record of human rights. We know Iran is making efforts to acquire weapons of mass destruction, and it is a state sponsor of terrorism. And we know that in January 2003 Applicant expressed her concerns about the safety of her family members in Iran, and she was concerned Iranian authorities might take action against them should she give up her Iranian passport and citizenship. Her concern for her family's safety is not surprising given Iran's dismal record of human rights. Given these circumstances, Applicant's family members who remain in Iran are at risk of being brought under control or used as a hostage by an Iranian intelligence or security service. Unfortunately, her family members in Iran (especially her brother and sister-in-law) are in a position where there is a potential for them to be exploited in a way that could force her to choose between loyalty to her family members and the interests of the U.S. Therefore, I conclude Applicant is unable to successfully mitigate the security concern. Accordingly, Guideline B is decided against Applicant.

Although I decided this case against Applicant, this decision should not be construed as an indictment of her loyalty and patriotism to the U.S., as those matters are not at issue. Instead, the clearly-consistent standard--which is a demanding standard-- requires I resolve any doubt against Applicant, and her connections or ties to Iran, a country hostile to the U.S., creates such doubt. To conclude, Applicant has failed to meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

## FORMAL FINDINGS

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

SOR ¶ 1-Guideline C: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

SOR ¶ 2-Guideline B: Against Applicant

Subparagraph a: Against Applicant (as to her brother)

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant (as to her brother)

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

## DECISION

In light of all 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.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Executive Order 10865, § 7.

3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.

5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

6. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

11. *Egan*, 484 U.S. at 528, 531.

12. E2.A3.1.2.1. The exercise of dual citizenship.

13. E2.A3.1.2.2. Possession and/or use of a foreign passport.

14. E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

15. ISCR Case No. 99-0452 (March 21, 2000) at pp. 2-3 (Modifying its earlier rulings, the DOHA Appeal Board, in an expansive reading of MC 1, concluded the literal language of MC 1 allows it to be applied even when an applicant exercises foreign citizenship after becoming a U.S. citizen).

16. E2.A3.1.3.2. Indications of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship.

17. E2.A3.1.3.3. Activity is sanctioned by the United States.

18. E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

19. 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.

20. E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

21. 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.

22. *See* 50 U.S.C. § 1801(b), which defines the term "agent of a foreign power."