

KEYWORD: Foreign Preference; Foreign Influence; Personal Conduct

DIGEST: Applicant has mitigated foreign preference concerns. His Iranian passport facilitated his travel to Iran for family visits. Applicant has surrendered the passport and is willing to renounce his Iranian citizenship. Foreign influence concerns are mitigated with regard to one of his sisters and mother who have become citizens of the United States. The same is true of a brother in the United States who has applied for citizenship, as well as Applicant's father and half-brothers who are citizens and residents of Canada. However, the record does not mitigate foreign influence concerns with regard to his brothers and sister who are citizens and residents of Iran. In addition, his travel to Iran may make Applicant vulnerable to coercion, exploitation, or pressure and the record does not mitigate one omission from his security clearance application. Clearance is denied.

CASENO: 03-00526.h1

DATE: 10/04/2004

DATE: October 4, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00526

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Rex B. Wingerter, Esq.

SYNOPSIS

Applicant has mitigated foreign preference concerns. His Iranian passport facilitated his travel to Iran for family visits. Applicant has surrendered the passport and is willing to renounce his Iranian citizenship. Foreign influence concerns are mitigated with regard to one of his sisters and mother who have become citizens of the United States. The same is true of a brother in the United States who has applied for citizenship, as well as Applicant's father and half-brothers who are citizens and residents of Canada. However, the record does not mitigate foreign influence concerns with regard to his brothers and sister who are citizens and residents of Iran. In addition, his travel to Iran may make Applicant vulnerable to coercion, exploitation, or pressure and the record does not mitigate one omission from his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On August 19, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline C (Foreign Preference), Guideline B (Foreign Influence), and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On October 11, 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on January 22, 2004. A notice of hearing was issued on February 18, 2004 and the hearing was held on March 5, 2004. During the hearing, eight Government exhibits (Govt Ex), nineteen Applicant exhibits (Ap Ex), and the testimony of three Applicant witnesses, including Applicant, were received. Without objection by Department Counsel, I allowed Applicant until March 19, 2004 to submit evidence he surrendered his Iranian passport. I have marked that submission as Applicant Exhibit T and included it in the file. The transcript (Tr) was received on March 11, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 42-year-old owner and chief executive officer of an information technology company. He is seeking a security clearance.

Applicant was born in Iran. He immigrated to the United States in 1977 in order to finish high school and obtain a college degree. Applicant lived with an older brother who had immigrated a year earlier. He received financial support from his father in Iran until the Iranian government prohibited it, following the revolution in 1979. Applicant obtained part time employment and later a computer support position at the university he attended. He received both undergraduate and master's degrees in computer science.

Applicant's father owned a company that manufactured kitchen products and a real estate business. He sold the manufacturing company in 1977 and retired after selling his real estate business in 1982. That year Applicant's father emigrated from Iran to the United States. Later, he immigrated to Canada and became a Canadian citizen (SOR ¶ 2.c). Applicant has two half-brothers who are citizens and residents of Canada (SOR ¶ 2.d).

While studying for his master's degree in 1985, Applicant met his future wife, a native born citizen of the United States. They were married in 1986 and have three children, ages 11 through 15. Applicant and his wife are raising the children in a Christian church.

Applicant became a U.S. citizen on August 3, 1990. Two years later, he started his own company. Applicant has progressed from being the sole part time employee of the company to managing 26 full time employees today. His company grossed nearly \$5 million in 2003.

On December 19, 1990, Applicant was issued a U.S. passport. For a trip to Iran in 1996 for a family reunion, he obtained an Iranian passport on December 4, 1996 (SOR ¶ 1.a). Before traveling to Iran, Applicant obtained assurance from his U.S. State Department clients that the trip would not cause any problems.

In addition to his trip to Iran in 1996, Applicant used his Iranian passport for two more visits to Iran between 1997 and 1999 (SOR ¶ 1.b). During his visits, he stayed with two of his brothers and a sister, who are citizens and residents of Iran (SOR ¶ 2.a). His brothers are in the home construction business. They have visited Applicant in the United States. His sister is a domestic caretaker.

During his trips to Iran, Applicant also visited other family members, including aunts, uncles, and cousins (SOR ¶ 2.e). He made the second visit to attend his niece's wedding and was accompanied by his father. He assisted his mother on his last trip to Iran in 1999.

On September 26, 2001, Applicant submitted a questionnaire for public trust positions (SF 85P) to the U.S. Department of State. Question 15, pertaining to his relatives, did not require him to include siblings. Question 19 required him to disclose his foreign travel for the past seven years. Applicant listed his trip to exico in 2001 trip to Iran in 1999 but he omitted his other two trips to Iran between 1996 and 1998.

On August 14, 2002, Applicant executed an application for a security clearance (SF 86). This was necessary in order for his company to obtain a facility clearance. The SF 86 was electronically prepared by his company's facility security officer (FSO), using his SF 85P from September 2001.

In response to question 9 of the SF 86, "your relatives and associates," Applicant omitted: his two brothers and sister who are citizens and residents of Iran; his brother and sister who are citizens of Iran and reside in the United States; and his two half-brothers who are citizens and residents of Canada (SOR ¶ 3.a).

In response to question 15 of the SF 86, Applicant disclosed that he used an Iranian passport to visit Iran. Question 16 of the same SF 86 requires the disclosure of travel outside the United States on other than official U.S. Government orders in the last 7 years. In response to that question, Applicant listed his trip to exico in 2001 trip to Iran in 1999 but he omitted his other two trips to Iran between 1996 and 1998 (SOR ¶ 3.b).

On November 25, 2002, Applicant provided a sworn statement to a DSS investigator. He provided information concerning his relatives and travel to Iran. Applicant also expressed his willingness to relinquish his Iranian passport and renounce his Iranian citizenship.

On October 17, 2003, Applicant's mother obtained her U.S. citizenship. She lives with one of Applicant's sisters in the United States. On May 9, 2003, that sister, who is a university professor, became a U.S. citizen. Since Applicant returned to Iran with his mother in 1999, she has made two additional visits. Applicant also has a brother in the United States who is an Iranian citizen. He is a real estate developer and has applied for U.S. citizenship (SOR ¶ 2.b).

On March 17, 2004, Applicant surrendered his Iranian passport to the Iranian government.

The passport had expired on December 4, 2000.

As President Bush described in his State of the Union address in 2003: "In Iran, we continue to see a government that represses its people, pursues weapons of mass destruction, and supports terror."⁽³⁾

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline C: Foreign Preference

The concern is that 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. The Directive E2.A3.1.1. Conditions that could raise a security concern and may be disqualifying include E2.A2.1.2, possession and/or use of a foreign passport (Disqualifying Condition 2). Pursuant to an August 16, 2000 memorandum by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline" (ASDC3I Memo), "application of the guideline requires that any clearance 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."

Conditions that could mitigate security concerns include E2.A3.1.3.1, dual citizenship is based solely on parents' citizenship or birth in a foreign country (Mitigating Condition 1). They also include E2.A3.1.3.4 (Mitigating Condition 4), when the individual has expressed a willingness to renounce dual citizenship.

Guideline B: Foreign Influence

A security risk may exist when an individual's immediate family, including co-habitants, 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. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Conditions that could raise a security concern and may be disqualifying include 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 (Disqualifying Condition 1). They also include E2.A2.1.3.6, conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government (Mitigating Condition 6).

Conditions that could mitigate security concerns include E2.A2.1.3.1 (Mitigating Condition 1). Mitigating Condition 1 applies with a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters) co-habitant, 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.

Guideline E: Personal Conduct

The concern under Guideline E is conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 addresses the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment, qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

CONCLUSIONS

Guideline C: Foreign Preference

Applicant's dual citizenship is mitigated pursuant to Mitigating Condition 1 because it was the result of his birth in Iran. However, his possession and use of an Iranian passport after becoming a U.S. citizen raises Disqualifying Condition 2.

On his SF 86, Applicant disclosed the fact he used an Iranian passport to visit Iran in 1996. He testified he used it for that trip and his two other trips to Iran to facilitate his travel to Iran. Applicant's actions are consistent with the guidance of the U.S. Department of State. It advises dual citizens to use their Iranian passports to enter Iran because of the risk of confiscation of their U.S. passports. ⁽⁴⁾

Applicant has complied with the ASDC3I Memo by surrendering his Iranian passport. He has also reiterated his willingness to renounce his Iranian citizenship, thereby satisfying the requirement of Mitigating Condition 4. Applicant has resided in the United States for over 27 years and has been a U.S. citizen for more than 14 years. He has been married to a U.S. citizen for 18 years and is raising their three children in a Christian church. Applicant has turned a part time business into a \$5 million a year enterprise. These facts corroborate his professed loyalty and preference for the United States. Based on the record, Applicant has mitigated foreign preference concerns. I find in favor of Applicant with regard to SOR ¶ 1.

Guideline B: Foreign Influence

The fact that Applicant has siblings who are citizens and residents of Iran raises Disqualifying Condition 1. His trips to Iran to visit family members may make him vulnerable to coercion, exploitation, or pressure by a foreign government. This also raises Disqualifying Condition 6.

One of Applicant's sisters and his mother have become citizens as well as residents of the United States. One of his brothers is a permanent resident of the United States and has applied for citizenship. Applicant's father and his half-

brothers are citizens and residents of Canada. This mitigates Disqualifying Condition 1 concerns with regard to all of them. Therefore, I find in favor of Applicant with regard to SOR ¶ 2.b, c and d.

However, two of Applicant's brothers and his other sister are citizens and residents of Iran. Although the evidence indicates that none of them are agents of a foreign power, the record does not demonstrate that they are not in a position to be exploited by a foreign power. The Iranian government is inimical to the United States and does not hesitate to repress its own citizens in order to pursue its interests. In addition, Iran offers a safe haven for certain terrorist groups.

Applicant testified that he would he would not succumb to an effort to exploit his siblings in Iran. However, one purpose of Disqualifying Condition 1 is undoubtedly to ensure that an individual is not placed in the position of having to choose between loyalty to the United States and loyalty to a family member. Applicant's trips to Iran also make him vulnerable to coercion, exploitation, or pressure by the Iranian government. In light of the record, I find against Applicant with regard to SOR ¶ 2.a and e.

Guideline E: Personal Conduct

Applicant's omission of trips to Iran and siblings who are citizens and residents of Iran from his SF 86 raises Disqualifying Condition 2. Even though Applicant may not have prepared his SF 86, to have signed and submitted it without carefully reviewing it would involve the type of questionable judgment with which Guideline E is concerned.

The evidence does not establish that Applicant's omission of his siblings from the SF 86 was deliberate. Applicant's SF 85P, which was used by the FSO to prepare the SF 86, does not require the inclusion of siblings in listing relatives. Although the SF 86 requires their inclusion and the FSO would have encountered this requirement in the electronic version of the form, it would not have been revealed to Applicant on the printed version of the form he signed. Therefore, the omission does not establish either a deliberate attempt to conceal the information or negligence in not including it. Accordingly, I find in favor of Applicant with regard to SOR ¶ 3.a.

The omission of two of Applicant's trips to Iran presents a different scenario. His response to question 16 on the SF 86 is the same as his response to the same question on the SF 85P, question 19. However, Applicant failed to provide a complete list of his Iranian trips when he completed his SF 85P. Although he testified that he recalled question 19 asking him to address foreign travel for the last three years, the form actually requires foreign travel for the last seven years. Applicant did not explain why the time period is missing from question 19 on his exhibit. However, the absence of the time period from question 19 would require an applicant to either list all foreign travel without regard to any time limitation or inquire as to the time period to address. Unlike question 9, moreover, Applicant had a second opportunity to correct his response to question 16 before submitting the SF 86. Given the submission's importance to his company, he exercised questionable judgment by not carefully reviewing the form before submitting it. Although I find Applicant to exude a sense of sincerity and credibility as a witness, the circumstances produce doubt as to the cause of his omission. As required by E2.2.2. of the Directive, such doubt must be resolved against Applicant. Accordingly, I against Applicant with regard to SOR ¶ 3.b.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: Against Applicant

DECISION

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Govt Ex 8 at 6.
4. Govt Ex 3 at 1.