

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: While Applicant's active use of his foreign passport to travel to Iran after he became a U.S. citizen raised security concerns over foreign preference, he declared that he would relinquish his foreign citizenship and not renew his foreign passport in order to comply with Department of Defense (DoD) policy. Also, he mitigated the allegations of foreign influence. Although his family members are dual citizens of the U.S. or Iran or citizens of Sweden and Iran, there is no evidence that they have ties to the government of Iran, or could be exploited by a foreign power in a way that would force him to choose between his ties to his family and to the United States (U.S.). Clearance is granted.

CASENO: 03-02382.h1

DATE: 08/31/2004

DATE: August 31, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-02382

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire,

## **FOR APPLICANT**

Ellen Mendelson, Esquire

### **SYNOPSIS**

While Applicant's active use of his foreign passport to travel to Iran after he became a U.S. citizen raised security concerns over foreign preference, he declared that he would relinquish his foreign citizenship and not renew his foreign passport in order to comply with Department of Defense (DoD) policy. Also, he mitigated the allegations of foreign influence. Although his family members are dual citizens of the U.S. and Iran or citizens of Sweden and Iran, there is no evidence that they have ties to the government of Iran, or could be exploited by a foreign power in a way that would force him to choose between his ties to his family and to the United States (U.S.). Clearance is granted.

### **STATEMENT OF THE CASE**

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, <sup>(1)</sup> so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 15, 2003. The SOR detailed security concerns in paragraph 1 over foreign preference (Guideline C) and in paragraph 2 over foreign influence (Guideline B). Applicant received the SOR and replied to the SOR allegations in an Answer of November 17, 2003; he admitted all allegations and requested a hearing.

On February 18, 2004, the case was assigned to me. A Notice issued on February 18, 2004, scheduled the matter for March 9, 2004. On March 2, 2004, Applicant retained counsel who entered her appearance and requested a continuance. Later she agreed to the hearing at the scheduled date, but at a later time. The Notice of March 3, 2004, confirmed this time change. At the hearing the Government introduced three exhibits whose admissibility was agreed to by stipulation. (Exhibits 1-3) Also stipulated to were two documents for official notice. (ON I & II) Applicant testified, called three witnesses, and offered three exhibits. (Exhibits A, B, C) The transcript (TR) was received on March 17, 2004.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 44 years old, went to work for defense contractor #1 in State #1 in August 2002. He worked for another branch of the firm from 1996 to 1998 but did not have a security clearance in that position. In September 2002 he completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) to seek a security clearance. (Answer; Exhibit 1; Exhibit B; TR 22-23, 62)

In 1982 he received an undergraduate degree from a U.S. university in State #2. ( Exhibits 1, 2, TR 24)

Applicant married in 1986 and divorced in 1988. He remarried in 1988 to a dual citizen of the U.S. and Iran. They have two children born in the U.S. in 1994 and 1998 who are dual U.S. and Iranian citizens based on their parents birth in Iran. (Exhibits 1, 2; Exhibit C; TR 35-36; 44-45)

### **Foreign Preference**

Born in Iran in 1959, Applicant came to the U.S. in August 1978 to go to school in State #3 He then moved to State #2 where he completed his degree. He became a naturalized U.S. citizen in 1996 and obtained a U.S. passport in April 1997. (Exhibits 1,2; Exhibit C; TR 24; 49) Applicant renewed his Iranian passport in January 1999 as he understood the State Department guidance advised it to expedite his entry. He feared travel on his U.S. passport to Iran would have been difficult and would require a visa. (Exhibit 3, TR 48-50, 52-57)

Applicant maintained his dual citizenship and traveled on his Iranian passport solely to visit his elderly parents. For example in 1995, 2000, and 2002 he went to Iran on his Iranian passport. When he went on his Iranian passport in 2002, he fully reported the visit to Company #1 and complied with all security procedures. Company #1 advised him of no restrictions on his travel to Iran. (TR 62) During his travels to Iran he had no interest or affiliation with the Iranian government, nor was he ever in a position to be exploited by the Iranian government. (Exhibit C) He has never been approached by any foreign intelligence operatives and would report any such approaches to his security officer or to the FBI. (Answer; Exhibits 5, 6; Exhibit A) If he were ever approached by a foreign intelligence agency, he would decline to cooperate as he is a U.S. citizen. (Exhibit 2)

Applicant provides no financial assistance to his relatives in Iran, has not served in the military in Iran, and has no financial interests there (Answer; Exhibits 5, 6; Exhibit A)

Applicant's Iranian passport expired in January 2004. He declared he has no intent to renew his Iranian passport and will renounce his Iranian citizenship as required by DoD policy. He not longer has any plans to travel to Iran. His father was recently deceased, and his mother is planning to immigrate to the U.S. and is waiting for her interview. (Exhibits 1,2,2; Exhibit C; TR 25,41, 51, 57-58)

### **Foreign Influence**

Applicant's father died in 2003, and his mother is a housewife. She is waiting for an interview date and plans to move to the U.S. She has visited the U.S. twice. (Answer; Exhibit 1; TR 33-34, 37-39, 40) Nothing in her background would make her vulnerable to coercion, pressure or influence.

Applicant has several siblings who are citizens of Iran, but none of them live in Iran or own property there. All of them work in the private sector. None of them work for any government or are agents of a foreign power. (Answer; Exhibits 1, 2; Exhibit C; TR 27-33; 42-48) Nothing in their background would make them vulnerable to coercion, pressure or influence.

Applicant's mother-in-law is a citizen of Iran and became a naturalized citizen of the U.S. in March 2004. His two children are dual citizens of the U.S. and Iran; both were born in the U.S. (Answer; Exhibit 2, Exhibit C; TR 41-42) Nothing in their background would make them vulnerable to coercion, pressure or influence.

### **U.S. Department of State Guidance**

The U.S. Department of State guidance on Iran notes the current government emphasizes vehement anti-U.S. stances; the U.S. prohibits most trade with Iran. U.S. citizens who go to Iran should exercise caution as authorities sometimes confiscate the U.S. passports of U.S.-Iranian dual nationals. (ON I, II)

### **References**

His manager, supervisor, and a co-worker testified on his excellence as an employee. Knowing that he was a dual citizen, each recommended him for a security clearance based on his demonstrated trustworthiness. (TR 63-77)

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed the following relevant Adjudication Guidelines:

### **Guideline C - Foreign Preference**

**The Concern: 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.**

**Conditions that could raise a security concern and may be disqualifying include:**

- (1) the exercise of dual citizenship;
- (2) possession and/or use of a foreign passport<sup>(2)</sup>;

**Conditions that could mitigate security concerns include:**

- (4) individual has expressed a willingness to renounce dual citizenship.

### **Guideline B - Foreign Influence**

**The concern: A security risk 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: (1) not citizens of the United States or (2) 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:**

(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

**Conditions that could mitigate security concerns include:**

(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;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order

to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## **CONCLUSIONS**

### **Guideline C - Foreign Preference**

Applicant's active exercise of his dual citizenship by using his Iranian passport for travel to Iran after becoming a naturalized U.S. citizen raised a security concern under Guideline C, Foreign Preference. An individual may be prone to provide information or make decisions that are harmful to the interests of the United States. Conditions that could raise a security concern and may be disqualifying include: (1) the exercise of dual citizenship; (2) possession and/or use of a

foreign passport. Further, DoD policy clarification of August 16, 2000 explains that "possession and/or use of a foreign passport" may be a disqualifying<sup>(3)</sup> condition unless the applicant surrenders the foreign passport .

While dual citizenship is not prohibited *per se* by policies of the United States, any conduct indicating possible foreign preference does raise a security concern where such action would increase the risk of an individual being influenced by the needs, desires, or aims of a foreign nation. Applicant's possible foreign preference arose from his active exercise of dual citizenship even after he became a U.S. citizen. Applicant possessed a foreign passport and used it on trips to Iran to visit his family even after his U.S. passport was issued to him. Applicant did so for convenience rather than to attempt to get an Iranian visa on his U.S. passport. However, when he traveled in 2002, he fully disclosed this trip to Iran to his company to comply with their requirements.

Applicant will not renew his foreign passport which expired in January 2004 as he wants to comply with Department of Defense (DoD) policy to mitigate this concern. While an Applicant must surrender his foreign passport or obtain official approval for its use, Applicant achieved that result when he credibly affirmed he will not use his foreign passport in the future. Further, he states he is willing to relinquish his citizenship in Iran. His stated intent is believable as several executives testified to his trustworthiness. Further, his motivation to continue to visit his elderly mother has changed as she will soon be eligible to immigrate to the U.S.; no other family members remain in Iran.

Further, he credibly maintains that he would not compromise classified U.S. information. While that statement alone does not establish his preference for the U.S., the executives all attested to his good character which demonstrates the seriousness of his intent to follow regulations. For example, he complied with all corporate requirements on his last trip.

After reviewing all of the evidence in the record and considering all of the security policies, including the August 16, 2000, policy clarification memorandum, I conclude he has met the DoD mitigation conditions to indicate his clear preference for the United States. Acts indicative of foreign preference warrant careful scrutiny. Hence, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.c. for Applicant.

### **Guideline B - Foreign Influence**

Applicant mitigated the Government's security concerns over Applicant's possible foreign influence raised by his close ties of affection to citizens of a foreign country: Applicant's relatives have no current ties to their foreign government. There is no evidence of any substantial likelihood that these relatives would exercise foreign influence over Applicant. While his mother resides in Iran, none of his siblings remain there. His children while dual citizens live in the U.S. None of his relatives have any ties to the government of Iran. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives.

While Iran and the U.S. have not established diplomatic relations, there are indications that the relationship has the potential to shift. Applicant is not vulnerable to duress merely because of these family ties when only his elderly mother remains in Iran. While acts indicative of foreign influence warrant careful scrutiny, after considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, here I conclude these ties do not raise such concerns. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.h. in Applicant's favor.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1.Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant



Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2.h.: For 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. Clearance is granted.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport . . . ."
3. The policy contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country.