

DATE: March 28, 2005

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 03-03140

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 49-year-old employee of a defense contractor. He came to the U.S. in 1969 when he was 13 years old to go to school, and became a naturalized citizen of the U.S. in 1994. In 1997, Applicant exercised dual-citizenship by obtaining and using an Iranian passport in order to travel to Iran to visit his gravely ill father before he passed away. As he exited Iran, authorities cancelled his passport. Applicant is willing to renounce his Iranian citizenship. His mother is now a citizen and resident of the U.S.; he has no immediate family members in Iran. He has worked for a defense contractor holding a sensitive position on an interim basis for four years without adverse incident. Applicant's eligibility for assignment to a sensitive position is granted.

STATEMENT OF THE CASE

On September 20, 2001, Applicant submitted an application for a position of public trust. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended and modified (the "Regulation"), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On April 11, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the guidelines for Foreign Preference and Foreign Influence under the Regulation.

Applicant answered the SOR in writing on May 6, 2004. He elected to have a hearing before an administrative judge.

The case was assigned to me on October 14, 2004. With the concurrence of the parties, I conducted the hearing on November 17, 2004. The government introduced seven exhibits. Applicant presented three exhibits and testified on his own behalf. DOHA received the transcript (Tr.) on December 9, 2004.

FINDINGS OF FACT

Applicant denied the allegations in ¶¶ 1.a, 1.b, and 1.c of the SOR. Applicant's Answer to SOR, dated May 6, 2004, at 1-2. He admitted the factual allegations in ¶¶ 2.a and 2.b of the SOR, and noted mitigating conditions. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 49 years old. Ex. 1 at 1. He was born in Iran, but moved to the United States in 1969 when he was 13 years old. Tr. at 10, 20; Ex. 2 at 2. Applicant lived with an uncle and attended school in the U.S. Tr. at 21. He completed high school in the United States. *Id.*

In 1979, Applicant applied for and obtained an Iranian passport, and used it to travel to Iran to visit. Ex. 2 at 2. At the time, he was an Iranian citizen. Applicant traveled to Iran two or three times while he was a student. Tr. at 28.

While Applicant was living in the U.S., there was a revolution in Iran and Applicant decided not to return to that country. *Id.* He went to college in the U.S. and was awarded a bachelor's degree in Economics, a master's degree in Business Administration, and a certification in Information Systems. Tr. at 19-20.

Applicant became a naturalized citizen of the United States in 1994. Ex. 1 at 1. In 1997, he applied for and obtained an Iranian passport in order to visit his father in Iran before he passed away. Tr. at 9; Ex. 2 at 2. Applicant believed that an Iranian-born U.S. citizen was required to show both an Iranian passport and a U.S. passport to enter the country. *Id.*

When Applicant arrived in Iran, government officials confiscated his Iranian passport on the basis that he had improperly marked on it by filling in the blank for his profession. Tr. at 23. The government required Applicant to report to the Department of State every day to obtain a renewal; it took Applicant about four weeks to finally get his passport. Tr. at 23-24. As Applicant exited Iran, the officials stamped his passport as "cancelled." Tr. at 24.

In August 2000, Applicant began working as a software quality assurance specialist for a federal contractor. Ex. 1 at 2. The position is designated ADP II/III; Applicant must be determined to be trustworthy under the Regulation to hold the position. Applicant has held the position on an interim basis for four years while this action was pending. His manager praises Applicant's analytical and problem-solving skills, work ethic, loyalty, and integrity. Ex. A.

Applicant has been married since 1991. Ex. 1 at 5. His wife is also from Iran; she came to the U.S. in about 1979. Tr. at 28. She is a naturalized citizen of the United States. Ex. 1 at 5. She has not returned to Iran since leaving the country, other than the trip in 1997 to visit Applicant's father during his last illness. Tr. at 24-25. Applicant's wife's mother, a sister, and a brother live in Iran, but she does not stay in regular contact with them. Tr. at 26-27. Applicant has no children. Tr. at 20.

When this action was initiated, Applicant's mother lived part of each year in the United States, and part of the year in Iran. Ex. 2 at 3. At that time, she was applying for U.S. citizenship. *Id.* In December 2003, Applicant's mother became a U.S. citizen. Ex. C. She now resides permanently in the United States. Tr. at 30.

Applicant's brother and his wife are naturalized citizens of the U.S. and live here permanently. Ex. 2 at 3. Applicant's sister and her husband are citizens and residents of Canada. Ex. 2 at 3.

Applicant has no immediate family members living in Iran. Tr. at 20. He has some cousins still living there, but he does not stay in contact with them. *Id.* He owns no property in Iran. Tr. at 31. All Applicant's assets are in the United States.

Iran is an Islamic republic. Ex. 3 at 1. In 1979, a revolt led by Islamic fundamentalists overthrew the former Shah Pahlavi. *Id.* at 3. Later that year, militants seized the U.S. embassy in Iran and held its occupants hostage for 444 days. *Id.* at 6. The Iranian government's foreign policy emphasizes vehement anti-U.S. and anti-Israel positions, eliminating outside influence in the region, and support for Muslim political movements abroad. *Id.* at 5-6. In April 1980, the U.S. government broke diplomatic relations with Iran. *Id.* at 6. The U.S. opposes Iranian efforts to acquire nuclear weapons/weapons of mass destruction, its support of international terrorism, its violent opposition to the peace process in the Middle East, and its poor record on human rights. *Id.* at 7.

A Consular Information Sheet issued by the U.S. Department of State (Ex. 4 at 1), notes that Iran sometimes confiscates

the U.S. passports of Iranian born citizens, and advises:

U.S.-Iranian dual nationals have been denied permission to depart Iran documented as U.S. citizens. To prevent the confiscation of U.S. passports, the Department of State suggests that dual nationals leave their U.S. passports at the nearest U.S. Embassy or Consulate overseas for safekeeping before entering Iran, and use their Iranian passports to enter the country. To facilitate their travel if their U.S. passports are confiscated, dual nationals may, prior to entering Iran, obtain in their Iranian passports the necessary visas for the country which they will transit on their return to the U.S., where they may apply for a new passport.

The U.S. State Department also notes that U.S. citizens who were born in Iran are considered Iranian citizens by Iranian authorities, and must enter and exit Iran bearing an Iranian passport. Ex. 4 at 2.

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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."

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for ... assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that ... assigning the person to sensitive duties is clearly consistent with the interests of national security." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Foreign Preference - 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.

Foreign Influence - A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

On August 16, 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C3I) issued a passport policy clarification pertaining to adjudicative guideline C, Foreign Preference. The memorandum states, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent 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. Modification of the Guideline is not required.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." DoD 5200.2-R, Appendix 8. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider 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. *Id.*

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. DoD 5200.2-R, ¶ C8.2.1. Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Foreign Preference

Appendix 8 of the Regulation sets out circumstances that could indicate a disqualifying condition (DC) relating to a foreign preference. Under DC 1, "[t]he exercise of dual citizenship" may be disqualifying. Similarly, DC 2 indicates that the "[p]ossession and use of a foreign passport" may show a potentially disqualifying foreign preference. In this case, Applicant used his foreign passport after becoming a U.S. citizen to visit his grievously ill father in Iran. Regardless of the reason, the use of a foreign passport is an exercise of the rights and privileges of a citizen of that foreign country. Ex. 6 (ASD/C3I memorandum, dated August 16, 2000); ISCR Case No. 98-0252 (App. Bd. Sept. 15, 1999). Applicant's admissions are substantial evidence supporting these two potentially disqualifying conditions.

The Directive also sets out potentially mitigating conditions (MC) that could lessen security concerns related to foreign preference. Under MC 1, it may be mitigating where "[d]ual citizenship is based solely on parents' citizenship or birth in a foreign country." Applicant became a citizen of Iran because of his birth in that country. However, he also exercised his Iranian citizenship when he obtained and used an Iranian passport after obtaining U.S. citizenship. ISCR Case No. 98-0252, (App. Bd. Sept. 15, 1999). I conclude this mitigating condition does not apply.

Mitigating condition 3 arises where the activity in question is "sanctioned by the United States." Applicant used his Iranian passport to travel to Iran on one occasion. United States' law does not prohibit a U.S. citizen from holding or using a foreign passport; however, recognizing that it is lawful is not the same as sanctioning the practice. Here, the United States did not direct, request, or require Applicant to use his foreign passport, it merely allowed Applicant to exercise his rights. I conclude this mitigating condition does not apply.

Finally, it may be mitigating where an "[i]ndividual has expressed a willingness to renounce dual citizenship." Applicant

renounced his Iranian citizenship when he became a citizen of the United States, and expressed his willingness to do so again if necessary. Moreover, he has chosen to live in the United States for the greater part of his adult life, his wife is a U.S. citizen, and he has all his assets here. I conclude this mitigating condition applies.

I carefully considered all the potentially disqualifying and mitigating conditions in light of the "whole person" concept. I conclude that Applicant has mitigated the security concerns arising from his previous exercise of dual citizenship.

Foreign Influence

The Regulation provides that it may be a disqualifying condition if "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." The Regulation does not define the phrase "immediate family member," but the Directive, ¶ E2.A2.1.3.1, defines the phrase to include a spouse, father, mother, sons, daughters, brothers, and sisters. Paragraph 2.a of the SOR alleges that Applicant's mother was a citizen and resident of Iran. At the time this action was initiated, that was true and Applicant admitted that fact. Answer to SOR, *supra*, at 1. By the time of the hearing in this case, Applicant's mother was a naturalized citizen of the United States, permanently residing in this country. Additionally, the substantial evidence indicates Applicant has no other immediate family members who are citizens or residents of Iran, nor does he have close ties of affection or obligation to his more-distant relatives there. I conclude the substantial evidence does not establish this potentially disqualifying condition.

It is also important to consider other factors discussed in DoD Regulation 5200.2-R, Appendix 8, including: (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.

Applicant was a mature adult at the time of the matters in question. He obtained and used the Iranian passport only once after becoming a U.S. citizen, and only because it was necessary in order to visit his father before his death. I realize the Appeal Board does not recognize these circumstances as mitigating conditions, nonetheless they are facts and circumstances bearing on the nature, extent, and frequency of the conduct, and Applicant's motivation. Iranian authorities subsequently cancelled his passport. I considered all the available evidence in light of the "whole person" concept discussed above and conclude Applicant has mitigated the security concerns arising from his exercise of dual citizenship.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Foreign Preference: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Paragraph 2, Foreign Influence: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant's eligibility for assignment to sensitive duties. Eligibility is granted.

Michael J. Breslin

Administrative Judge