

DATE: January 21, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04220

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has successfully mitigated the foreign preference security concern based on his clear preference for the U.S. But he is unable to successfully mitigate the foreign influence security concern based on his close family ties to Iran. Clearance is denied.

STATEMENT OF THE CASE

On November 21, 2003, 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 his Answer to the SOR, dated December 23, 2003, Applicant admitted to the factual allegations in the SOR except for subparagraph 1.a; he also requested a hearing.

Department Counsel indicated he was ready to proceed on June 28, 2004, and the case was assigned to me July 7, 2004. A notice of hearing was issued July 13, 2004, scheduling the hearing for August 4, 2004. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript September 8, 2004. Issuing a decision in this case was delayed due to a heavy caseload.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the record, I make the following essential findings of fact:

Applicant is a 42-year-old married man who was born in Iran to Iranian parents in 1962. He became a naturalized U.S. citizen in 1992. He is employed as a senior software engineer for a large research and engineering company. He is

seeking to obtain a security clearance in conjunction with his employment. Concerning his employment, two senior-level managers submitted letters (Exhibits A and B) endorsing Applicant's application for a security clearance. The managers describe Applicant as a talented, hardworking, and loyal employee, and both managers believe Applicant is worthy of the trust that is a prerequisite to receiving a security clearance.

Applicant was raised and educated in Iran until 1978. The then 16-year-old Applicant entered the U.S. via a student visa. After completing his secondary education, he earned a B.S. in electrical engineering from a state university in December 1986.

Applicant married his first wife, a native-born U.S. citizen, in 1983 and they divorced in 1988. The marriage produced one child, a daughter, who is now approximately 22 years old. She is a native-born U.S. citizen who lives in the U.S.

Applicant married his second wife, a native-born Iranian citizen, in 1993. Applicant met her during his first return trip to Iran in 1993. Applicant and his spouse have two sons, ages 8 and 5, who are both native-born U.S. citizens. His spouse became a naturalized U.S. citizen in December 2000. His wife continues to exercise dual citizenship with Iran, as she retains an Iranian passport that she uses for travel to Iran.

Applicant has family members who are citizens of and residents in Iran. Applicant describes his family as secular. His parents currently live in Iran. Previously, Applicant sponsored their immigration to the U.S., and his father obtained U.S. citizenship and his mother is a permanent resident alien. After living in the U.S. for some time, they elected to return to Iran in 2002. Applicant does not know if they will return to live in the U.S. Applicant's father is a retired lab director for an oil refinery and his mother has always been a housewife. Applicant speaks with his parents on the telephone about once a month, and he occasionally sends them money to assist them in their retirement.

Applicant has one brother and two sisters who are citizens of and residents in Iran. The brother is a doctor who works in a city hospital, and the two sisters are both married and are housewives. Applicant speaks to his siblings on the telephone approximately once a month. He does not provide any financial assistance to his siblings.

Sometime in the early 1980s, after the 1979 Islamic Revolution, some of Applicant's family members were persecuted by the Iranian government. One of Applicant's sisters and her then husband were jailed due to their opposition to the government. The sister was eventually released, but her husband was executed. Applicant also testified that a cousin disappeared and was never found. Applicant does not know much about the situation involving his sister, as it is a matter she does not care to discuss and he has not pressed her for details out of respect for her.

Applicant's wife's mother and siblings are also citizens of and residents in Iran. His wife speaks to her family in Iran approximately once a month, and she has visited them in the past. At the time of the hearing, Applicant's wife and sons were in Iran to visit family. His wife used an Iranian passport to enter the country, and the two sons traveled on their mother's passport.

Since obtaining U.S. citizenship in 1992, Applicant has made three trips to Iran for family visits. The trips took place in 1993, 1996, and 1999, and he used an Iranian passport for this travel. His most recent Iranian passport was issued in May 1996 with an expiration date of June 2006. He used an Iranian passport to enter and depart Iran during his three trips; he used his U.S. passport to enter and depart the U.S. He experienced no problems or difficulties with Iranian officials or authorities during these trips. In December 2003, Applicant delivered his Iranian passport to the Iranian Interests Section, located in the Embassy of Pakistan in Washington, D.C. (Exhibit C). Applicant has not traveled to Iran since 1999, and he would like to travel to Iran with his sons in the future so long as doing so is permissible.

Applicant registered with the U.S. Selective Service System, and he has never served in the armed forces of Iran. Before his first return trip to Iran in 1993, Applicant was able to satisfy his Iranian military obligation without serving by paying a fee of approximately \$8,000.00. The transaction was handled by his father, who was in Iran at the time. Applicant received a document releasing him from his Iranian military service obligation. With this document in hand, Applicant was able to travel to Iran without fear that he would be detained and required to serve in the Iranian armed forces.

Applicant considers himself a U.S. citizen only, but recognizes that in the eyes of the Iranian government he is

considered an Iranian citizen. To that end, he is willing to renounce his Iranian citizenship.

Applicant has no financial interests in Iran or any other foreign country, but he does have financial interests in the U.S. His annual salary is in the six-figure range, he and his spouse own a rather expensive home, and he has accumulated money in various accounts (e.g., retirement account).

Likewise, Applicant has no professional or business interests in Iran or in any other foreign country. And he has never voted in an Iranian election.

Administrative notice was taken of the certain facts concerning Iran as specified by Department Counsel in Exhibits 6, 7, 8, and 9. Two specific areas are highlighted 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 52 Americans were held hostage for 444 days. The United States broke relations with Iran on April 7, 1980, and the two countries have had no official dialogue since. Iran maintains an interests section 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 iddle East peace process; and (4) its dismal human rights records (Exhibit 6, at pp. 6-7).

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.

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."

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.⁽²⁾ There is no presumption in favor of granting or continuing access to classified information.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁵⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ 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.⁽⁸⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

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."⁽¹⁰⁾ 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 has established its case under Guideline C. By his affirmative actions, Applicant exercised dual citizenship by obtaining, possessing, and using an Iranian passport after obtaining U.S. citizenship. By doing so, Applicant demonstrated a preference for Iran. Under these circumstances, DC 1 [\(11\)](#) and DC 2 [\(12\)](#) apply against Applicant. But given he surrendered the Iranian passport, he has complied with the Money memorandum, which requires a clearance be denied or revoked based on possession of a foreign passport. Also, DC 4 [\(13\)](#) applies against Applicant because, by obtaining a release from his Iranian military obligation in 1993, he accepted a benefit from a foreign country.

Turning to the mitigating conditions under Guideline C, MC 1 [\(14\)](#) applies because his dual citizenship is based on his birth in a foreign country. [\(15\)](#) MC 2 [\(16\)](#) does not apply because the disqualifying behavior discussed above took place after he 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 his Iranian citizenship.

Applicant has lived in the U.S. for the last 26 years, which is all of his adult life. He completed his secondary and college education in the U.S., and has worked in his field of expertise in the U.S. It's plain his immediate family and professional lives are firmly rooted in the U.S. And the fact Applicant surrendered the Iranian passport and is willing to renounce his Iranian citizenship are clear, logical, and convincing reasons to have no concern for where his true preference lies. Given these circumstances, Applicant has successfully mitigated the security concern, and Guideline C is decided for Applicant.

2. Guideline B-Foreign Influence

Under Guideline B for foreign influence, 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 has established its case under Guideline B. Applicant has close family ties to Iran, as evidenced by his parents, siblings, and in-laws who are citizens of and residents in Iran. The strength of the ties is also demonstrated by Applicant's three trips to Iran, as well as his wife's trips, for family visits. These circumstances raise a security concern under DC 1. [\(19\)](#)

I have reviewed the mitigating conditions under Guideline B and conclude none apply. The only MC deserving serious consideration is MC 1, [\(20\)](#) but it does not apply. It appears that none of the family members are agents of the Iranian government or any other foreign power. [\(21\)](#) But that does not end the analysis, as Applicant must show his family members in Iran are not in position to be exploited by the Iranian government.

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 also know Iran is making efforts to acquire weapons of mass destruction, and it is a state sponsor of terrorism. Given these circumstances--which are clearly beyond Applicant's control--the presence of Applicant's family members in Iran places them at risk of being brought under control or used as a hostage by an Iranian intelligence or security service. Unfortunately, his family members are in a position where there is a potential for them to be exploited in a way that could force him to choose between loyalty to his family members and the interests of the U.S. This potential risk is not hypothetical, as Applicant's sister, brother-in-law, and cousin were previously subject to persecution by the Iranian government. Accordingly, Applicant is unable to successfully mitigate the security concern, and Guideline B is decided against him.

To conclude, Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have 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: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

SOR ¶ 2-Guideline B: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the 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. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
10. *Egan*, 484 U.S. at 528, 531.
11. E2.A3.1.2.1. The exercise of dual citizenship.
12. E2.A3.1.2.2. Possession and/or use of a foreign passport.
13. E2.A3.1.2.4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country.
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.A2.1.3.1. 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.
21. *See* 50 U.S.C. § 1801(b).