

DATE: June 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10198

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Patricia G. Gittelson, Esquire, Applicant's Counsel

SYNOPSIS

The Applicant came from Iran to the United States in 1988. She attended college in the U.S., and graduated in 1995. She was also naturalized in 1995. When she became a U.S. citizen, she renounced her Iranian citizenship. She retained her Iranian passport, however, and used it to travel to Iran in 2000 and in 2001 to visit her parents. Her parents now live in the U.S.; and as such, she intends no future visits to Iran. She surrendered her Iranian passport in February of 2003. Her brother lives in Iran where he works for a private bank. He has applied for a green card to immigrate to the U.S. Her in-laws are citizens of and live in Iran. They are farmers. She has little contact with them. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On September 4, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about November 18, 2003.

The case was received by the undersigned on February 19, 2004. A notice of hearing was issued on March 2, 2004, and the case was heard on March 29, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on April 16, 2004. The issues raised here are whether the Applicant's alleged foreign preference and perceived foreign influence militates against the granting of a security clearance. [The admits the underlying factual basis of most of the allegations, except for 1.a. in that she denies she is dual national, and 1.e. in that she has surrendered her Iranian passport.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 42 years of age, and is employed by a defense contractor that seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline C - Foreign Preference

1.a.~1.e. The Applicant came to the U.S. in 1988 (Government Exhibit (GX) 1 at page 2). She came to the U.S. to flee the current regime, and to further her education (Transcript (TR) at page 16 lines 1~22). She graduated from an American university in 1995, and became a U.S. citizen that same year (TR at page 17 lines 12~22, and Applicant's Exhibit (AppX) A at pages 9, 11 and 12). When she became a U.S. citizen, she renounced her Iranian citizenship (TR at page 29 lines 16~21). She retained her Iranian passport, however, and used it to travel to Iran in 2000 and 2001 to visit her parents (TR at page 20 line 17 to page 21 line 10, and at page 30 lines 17~19). Her parents have now immigrated to the U.S.; and as such, she has no intention of ever returning to Iran (TR at page 21 lines 9~10, and page 32 lines 10~11). In February of 2003, the Applicant surrendered her Iranian passport to the Iranian Interest Section in the U.S. (TR at page 38 lines 20~24, and Applicant's Answer to the SOR at page 1).

Guideline B - Foreign Influence

2.a. and 2.b. The Applicant's brother is a citizen of and presently resides in Iran (Government Exhibit (GX) 1 at page 5). He works for a private bank (TR at page 18 line 21 to page 20 line 5, and AppX B at page 3). He has applied for a green card to immigrate to the U.S. (TR at page 35 lines 3~6, and AppX A at page 15). His application was approved in June of 1997; and as such, he is waiting for his turn to immigrate which should be "soon" (*id*).

The Applicant's father-in-law, mother-in-law, brother-in-law and sister-in-law are citizens of and reside in Iran (TR at page 20 line 6~16, GX 1 at page 5, and AppX B at pages 4~11). They are farmers, and the Applicant has little contact with them (*id*).

Mitigation

Those who work with and supervise the Applicant aver that she is trustworthy, and should be granted a security clearance (AppX a at pages 16~30 and AppX B at page 2).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical

basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference, or who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

When the Applicant became a U.S. citizen in 1995, she renounced her Iranian citizenship. She retained her Iranian passport, however, and used it to travel to Iran in 2000 and 2001. The second disqualifying condition is therefore applicable, as there was "[p]ossession and/or use of a foreign passport." As her parents have now immigrated to the U.S., she no longer has any intention of visiting Iran, and more than a year ago she surrendered her Iranian passport. She has thus complied with the *Money Memorandum*, which requires that an Applicant surrender her foreign passport. Guideline C is therefore found in her favor.

The Applicant's brother and in-laws are citizens of and live in Iran. The second disqualifying condition is therefore applicable as "[a]n immediate family member . . . is a citizen of . . . a foreign country." Her brother works for a private bank, and her in-laws are farmers. Her brother will soon be immigrating to the U.S., and she has little contact with her agrarian in-laws. None of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in Iran can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. The first mitigation condition is therefore applicable as "the immediate family members . . . 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 persons involved and the United States." Guideline B is also found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her alleged foreign preference, and foreign influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge