

DATE: June 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10853

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Lynette Andresen, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a dual citizen of the United States and Iran, has a mother-in-law and father-in-law who are citizens and residents of Iran. Applicant's parents, wife, and son are dual citizens of the United States and Iran, but reside in the United States. Applicant obtained an Iranian passport in September 1999 that does not expire until September 2004, to permit his wife and child to travel to Iran to visit her parents. Although he has indicated a willingness to surrender the Iranian passport, there is no evidence he has done so. Clearance is denied.

STATEMENT OF THE CASE

On December 3, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence) and Guideline C (foreign preference). Applicant submitted a response to the SOR, dated January 9, 2004, and requested a decision based upon the written record without a hearing. In his response to the SOR, Applicant admitted all allegations contained in the SOR.

Department Counsel prepared a File of Relevant Material (FORM) on March 19, 2004, that was mailed to Applicant on March 24, 2004 and informed him he had 30 days from receipt of the documents to submit his objections or any information he wanted considered. Applicant acknowledged receipt of the file on April 1, 2004, and did not file any additional information or interpose any objection to the material submitted by Department Counsel within the time allowed. The case was assigned to me May 20, 2004.

PROCEDURAL MATTERS

Department Counsel requested that administrative notice be taken of FORM items 6, 7, 8, 9, and 10. Applicant did not file any objection to that request. I have determined that each item is a proper subject of administrative notice, and

accordingly, have taken such notice of those items.

FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 37-year-old man who has been employed by a defense contractor as an embedded software engineer since December 9, 2002. He graduated from a U.S. college in December 1999, receiving a bachelor of science degree in computer engineering. Before being hired by his present employer he held several engineering jobs with various employers between June 1998 and August 2002 that were interrupted by three periods of unemployment lasting between one and three months. He worked as a clothing store manager/salesman from February 1988 to April 1997.

Applicant first married in November 1986. That marriage ended in divorce in July 1991 with no children being born of the marriage. He has been married to a different woman since February 1995, and has one child born of this marriage who is five years old.

Applicant was born and raised in Iran and immigrated to the United States in approximately September 1983 when he was 17 years old to obtain an education and a better life. He became a naturalized U.S. citizen on May 19, 1994, and obtained a U.S. passport on July 11, 1994. His first wife was a U.S. citizen, although she was born in Nicaragua. (2) His second wife was born in Iran and lived there until approximately the time they married in February 1995. (3) Applicant's wife became a naturalized U.S. citizen on August 1, 2001. His son is a U.S. citizen based upon his birth in the U.S. to a U.S. citizen. Applicant, his wife, and son retain dual citizenship with Iran. (4)

Applicant provided a statement to a special agent from the Defense Security Service (DSS) on April 10, 2003 in which he stated he has visited Iran twice since immigrating to the United States. His first reported visit occurred during the summer of 1993, and lasted approximately three months. His next reported visit was in December 1994, and lasted two weeks. Applicant reported meeting his present wife at a social gathering while he was visiting his family in 1993, and apparently returned to Iran to marry her in December 1994 based upon his statement that she immigrated to the U.S. after they were married.

Applicant's mother, father, and only sibling, a sister, all reside in the United States. His sister immigrated to the U.S. when she was 14 years old, which would have been in approximately 1984, and she became a naturalized U.S. citizen on August 26, 1993. Applicant's father worked in the Iranian Social Services Department and his mother worked as a teacher before immigrating to the U.S. in approximately 1997. His father became a naturalized U.S. citizen on July 7, 2000, and his mother on June 23, 2001. In addition to the Iranian policy that considers them to be Iranian nationals, Applicant's mother and father retain dual citizenship, and presumably possess Iranian passports, so they are able to visit their immediate family members in Iran on occasion. Applicant also has three aunts and eight uncles who are citizens and residents of Iran whom he speaks with by telephone approximately once a year.

Applicant's mother-in-law and father-in-law are citizens and residents of Iran. His father-in-law is 67 years old and is a retired health care worker. His mother-in-law is 68 years old and is a retired school teacher. Applicant speaks with his parents-in-law by telephone about twice a year.

Applicant obtained an Iranian passport on September 27, 1999 that does not expire until September 26, 2004. He obtained the passport because it was required by Iran that he possess an Iranian passport in order for his wife and son to travel to Iran to visit her relatives, which they have done on two occasions since 1999. He has never traveled using the Iranian passport, and maintains it only to allow his wife and child to travel to Iran. He has expressed a willingness to surrender the passport if required to maintain a security clearance, even though he realizes that would prohibit his wife and son from visiting their relatives in Iran. But there is no evidence Applicant has actually surrendered the Iranian passport.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon 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. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, and Guideline C, pertaining to foreign preference, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole 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.⁽⁵⁾ The government has the burden of proving controverted facts.⁽⁶⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁷⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁸⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽¹⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

No one has a right to a security clearance⁽¹²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹⁴⁾

CONCLUSIONS

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.

Disqualifying Condition (DC) 1: *The exercise of dual citizenship* and DC 2: *Possession and/or use of a foreign passport* are acts that demonstrate a foreign preference. Despite becoming a naturalized U.S. citizen in May 1994, Applicant obtained an Iranian passport in September 1999 so his wife and child could travel to Iran to visit relatives. Consistent with his reason for obtaining an Iranian passport, his wife and child have traveled to Iran on at least two occasions since 1999. Therefore, while Applicant has not used the passport for his own travel, he has used it to allow his family to travel to Iran. Accordingly, he has exercised his dual citizenship with Iran by both possessing and using an Iranian passport.

Additionally, although Applicant has expressed a willingness to surrender the Iranian passport, and despite being provided with a copy of the ASD(C3I) emorandum, dated August 16, 2000 (the Money memo),⁽¹⁵⁾ Applicant has not surrendered that passport. Further, the passport will not expire until September 26, 2004. The Money memo mandates that, "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." Applicant has done neither of these mitigating acts. Applicant has failed to mitigate the security concern caused by his acquisition, use, and retention of his Iranian passport.

The only potentially Mitigating Condition (MC) is MC 1: *Dual citizenship is based solely on parents' citizenship or birth in a foreign country.* However, as noted above, Applicant has voluntarily exercised his dual citizenship after becoming a United States by obtaining and using an Iranian passport. Accordingly, I do not find that this or any other mitigating condition applies in Applicant's case. Guideline C is decided against Applicant.

Foreign Influence. 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 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.

Based upon the allegations in the SOR, DC 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* and DC 2: *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists* must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B:

DC 1 and DC 2 apply in this case because Applicant's immediate relatives are dual citizens of Iran, and his mother-in-law and father-in-law are both citizens and residents of Iran. As indicated in Applicant's SOR answer (FORM item 3) his parents purposely maintain dual citizenship with Iran to enable them to travel there to visit relatives. His wife and child have visited her parents in Iran on two occasions since 1999. Accordingly, not only are Applicant's in-laws in a constant position whereby they are subject to adverse foreign influence and/or duress, but, at least on occasion, his parents, wife and child place themselves in the same position.

Once the government meets its burden of proving controverted facts⁽¹⁶⁾ the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.⁽¹⁷⁾ Further, the government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating conditions, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.⁽¹⁸⁾

The following information about Iran and its relations with the United States that was administratively noticed at the government's request is significant in determining whether a security concern exists under the known facts in this case:

Large-scale demonstrations have taken place in various regions throughout Iran over the past several years as a result of a sometimes volatile political climate. U.S. citizens who travel to Iran despite the Travel Warning against such travel should exercise caution throughout the country. . . .

Iranian security personnel may at times place foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personal possessions in hotel rooms may be searched.⁽¹⁹⁾

The Department of State warns U.S. citizens to consider carefully the risks of travel to Iran. . . . Tensions generated by the current situation in Iraq have increased the potential threat to U.S. citizens and interests abroad posed by those who oppose U.S. policy. Some elements of the Iranian government and population remain hostile to the U.S.. . . U.S. citizens who go to Iran should exercise caution. . . . U.S. citizens of Iranian origin who are considered by Iran to be Iranian citizens have been detained and harassed by Iranian authorities.⁽²⁰⁾

Iran remained the most active state sponsor of terrorism in 2002. Its Islamic Revolutionary Guard Corps and Ministry of Intelligence and Security were involved in the planning of and support for terrorist acts and continued to exhort a variety of groups that use terrorism to pursue their goals.

Iran's record against al-Qaida has been mixed. While it has detained and turned over to foreign governments a number of al-Qaida members, other al-Qaida members have found virtual safehaven there and may even be receiving protection from elements of the Iranian Government.⁽²¹⁾

The following Mitigating Conditions (MC) must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B: MC 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, 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;* and MC 3:

Contact and correspondence with foreign citizens are casual and infrequent.

There is no evidence to suggest that Applicant's family members are, or ever have been, Iranian agents, so the issue under MC 1 is whether they are in a position to be exploited by Iran. Iran is a country that has been hostile to the United States since the 1979 revolution that overthrew the former pro-western government. That hostility toward the United States places a heavy burden upon Applicant to demonstrate his family ties with relatives living in Iran do not pose a security risk. (22) To that end he has introduced evidence of his minimal contacts with his in-laws and extended family in Iran. Additionally, Applicant asserts he cannot be placed in a position of compromise or pressured as a result of a hostage situation, or otherwise pressured, coerced, or blackmailed as a result of his foreign relatives.

Despite Applicant's assertions that he cannot be coerced or pressured by the presence of his relatives in Iran, the fact remains that his in-laws are residents in that country, his parents, wife and child visit the country, and all are therefore subject to duress and/or influence by the Iranian Government or forces hostile to the U.S. located in that country. Applicant has failed to offer sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline B is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline C: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

SOR ¶ 2-Guideline B: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The FORM does not contain any information about the source of this woman's U.S. citizenship.
3. The FORM is unclear about when Applicant actually married his present wife. The SF 86 (FORM item 4) lists the marriage as having occurred in February 1995, while Applicant claims in his SOR Answer (FORM item 3) that the marriage ceremony took place in Iran in 1992. In the statement he provided to the Defense Security Service on April 10, 2003, Applicant claims he has only traveled to Iran on two occasions, once during the summer of 1993, and once in December 1994, and that his wife immigrated to the U.S. after they were married.
4. See: FORM Item 8: **Dual Nationality**: U.S. citizens who were born in Iran . . . and the children of such persons, are considered Iranian nationals by Iranian authorities. *Consular Information Sheet, Iran, dtd March 16, 2004*
5. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
6. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

7. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
8. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
9. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
12. *Egan*, 484 U.S. at 528, 531.
13. *Id* at 531.
14. *Egan*, Executive Order 10865, and the Directive.
15. FORM item 6
16. Directive, Additional Procedural Guidance, Item E3.1.14
17. Directive, Additional Procedural Guidance, Item E3.1.15
18. ISCR Case No. 99-0597 (December 13, 2000)
19. FORM item 8, *Consular Information Sheet, Iran, dtd March 16, 2004*
20. FORM item 7, *Travel Warning, Iran, dtd March 16, 2004*
21. FORM item 9, *U.S. Department of State , Patterns of Global Terrorism -2002, dtd April 30, 2003*
22. ISCR Case No. 01-26893 (October 16, 2002)