

DATE: February 15, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11169

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated the foreign preference security concerns raised by his obtaining and using an Iranian passport to visit Iran. But he failed to mitigate the foreign influence security concerns raised by his association with immediate family members who are citizens or residents of Iran. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 27 October 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 8 November 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 17 December 2004. On 26 January 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 4 February 2005.

FINDINGS OF FACT

Applicant is a 48-year-old senior design engineer for a defense contractor. Ex. 1 at 1, 2. In 1979, he wanted to leave Iran and go to the U.S. His younger brother had just emigrated from Germany to the U.S. As the U.S. did not have diplomatic relations with Iran, Applicant was unable to procure a visa. So he went to Germany to study. Because of his poor German language skills, Applicant was unable to gain admittance to any of the universities there. The U.S. denied his first request for a visa.

About six months after he arrived in Germany, Applicant married an Iranian woman. She moved to Germany to be with him. Six months later, she returned to Iran because she was homesick. Because of the political situation in Iran, Applicant's wife was prohibited from leaving the country, so Applicant followed his wife back to Iran. Three weeks

later, they were smuggled out of the country to Turkey by some of his father's business associates. They returned to Germany where they eventually obtained a visa to the U.S. Once in the U.S., they applied for and were granted political asylum. Ex. 2 at 2. In May 1992, the couple's daughter was born. Ex. 1 at 4. Applicant and his wife were divorced in 1984. Ex. 1 at 3. She now lives in Hong Kong and their daughter spent most of her formative years with Applicant. Tr. 61.

Applicant became a U.S. citizen in 1989. Ex. 1 at 1. In 1991, he married a native-born U.S. citizen in 1992. Tr. 34. They have three children.

Applicant returned to Iran on two occasions: For two to three weeks from December 1997 to January 1998 and in September 1999. Tr. 50. The first trip back was to pay his respects to his mother who had died in Iran in the late 1980s and to help his brother find an Iranian bride. Tr. 37, 51. He sought, but was unable to obtain, a visa because the U.S. and Iran did not have diplomatic relations. The Iranian government wanted Applicant to renounce his U.S. citizenship. He refused. Instead, he paid a fine of about \$1,000 for having exited the country illegally in 1979, and was granted an Iranian passport.

The first time Applicant returned to Iran, the Iranian government confiscated his Iranian passport at the border because he had exited the country illegally in 1979. Tr. 53. He had to go to court and answer a lot of questions. Tr. 54. The passport was returned.

The second time, he traveled to Iran to see his father who had taken ill while visiting friends there. A couple of days after he arrived, a government official ordered Applicant and his brother to appear the following day for interrogation. The questions concerned Applicant's knowledge of any dissidents and whether he would be willing to subscribe to Iranian language newspapers in the U.S. for them. Applicant denied knowing any dissidents, but agreed to get them a newspaper. After he left Iran, he was never contacted about getting the newspapers, so he did not do so.. Tr. 57. Everywhere he went, he was required to let the authorities make copies of his U.S. passport. Tr. 59.

When interviewed by a Defense Security Service agent on 2 December 2003, Applicant asserted his Iranian passport had expired but he did not wish to send it to the Iranian embassy because he did "not want to make waves or cause any problems." He eventually returned the passport to the Iranian Interest Section in Washington, D.C., on 17 November 2004. Ex. B.

Applicant's father is a citizen of Iran who is currently residing in the U.S. He will be sworn in as a U.S. citizen in March 2005. In the past, Applicant's father has traveled to Iran almost every year to visit friends. Because of his poor eyesight and declining health, he is not able to do so any more. Tr. 62-63.

Applicant's brother, sister, and a half-sister (his father's daughter) are naturalized U.S. citizens. Applicant has an aunt--his father's sister--who is a resident citizen of Iran. She is "extremely dear" to him; she is like mother to him. She apparently has Alzheimer's Disease which prevents him from communicating with her. Tr. 63.

Applicant has a half-brother and half-sister who are resident citizens of Iran. His half-sister is a housewife. His half-brother is a retired journalist. Ex. 2 at 3; Tr. 59-60. Although Applicant did not know about them until he was a teenager (they were his mother's children from a previous marriage), he talks to them via telephone once or twice a year. Applicant assisted his half-brother's son in immigrating to the U.S. Ex. 2 at 4. There is no evidence Applicant's half-brother's son has become a naturalized U.S. citizen. Applicant's daughter (by his first wife) married the half-brother's son, and Iranian citizen. They are now separated. Tr. 60-61. Applicant's daughter's maternal grandmother lives at least part-time in Iran. Tr. 42.

Applicant is financially stable and all of his assets are in the U.S. He does not have any financial interests in Iran nor does he provide any financial assistance to anyone there. Applicant has no plans to visit Iran in the foreseeable future. Tr. 64. Applicant's friends and coworkers find Applicant to be reliable, trustworthy, and dedicated to his duties.

Iran is a state sponsor of terrorism and remains an impediment to international efforts to locate and prosecute terrorists. Iran is also seeking to acquire nuclear weapons and other weapons of mass destruction. Ex. 4 at 7-12.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline C--Foreign Preference

In the SOR, DOHA alleged Applicant exercised dual citizenship with Iran (¶ 1.a), obtained and used a Iranian passport after he became a U.S. citizen (¶ 1.b), used the Iranian passport to enter and exit Iran in 1997 and 1999 (¶ 1.c), and did not want to relinquish his Iranian passport (¶ 1.d). When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., then he may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1.

The Government established each of the allegations in the SOR. Applicant exercised dual U.S. and Iranian citizenship (DC E2.A3.1.2.1) by obtaining and using an Iranian passport after he became a U.S. citizen (DC E2.A3.1.2.2). Applicant only sought the passport because he could not visit Iran on his U.S. passport. A security clearance must be denied to applicants using or possessing a foreign passport unless authorized by the U.S. Government. Memorandum from the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudicative Guideline* (Aug. 16, 2000). The fact Applicant did so because it was the only way he could visit Iran is not mitigating. *See* ISCR Case No. 02-02052 at 4 (App. Bd. Apr. 8, 2003). Despite some initial reluctance, Applicant returned his expired passport to the Iranian government. Nevertheless, before finding for him, I "must consider not only the bare fact of surrender, but also the overall facts and circumstances surrounding the applicant's possession, use, and surrender of the foreign passport." ISCR Case No. 02-00318 at 4 (App. Bd. Feb. 25, 2004). After carefully considering those facts, including the purpose for his visits and his inability to use his U.S. passport to enter Iran, I find for Applicant.

Guideline B--Foreign Influence

In the SOR, DOHA alleged Applicant's father is a citizen of Iran living in the U.S. (¶ 2.a), his half-siblings are citizen residents of Iran (¶ 2.b); he maintains telephone contact with his half-siblings in Iran (¶ 2.c); he traveled to Iran in 1997 and 1999 (¶ 2.d); and he does not want to relinquish his Iranian passport (¶ 2.e). A security risk may exist when an applicant's immediate family, or other persons to whom he 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. Directive ¶ E2.A2.1.1.

The Government's evidence and Applicant's admissions establish a potentially disqualifying condition under Guideline B--Applicant has immediate family members (his father), and other persons to whom he has close ties of affection or obligation (his aunt, his half-brother and half-sister, his daughter's husband, and his brother's wife⁽²⁾), who are citizens

or residents of a foreign country. DC E2.A2.1.2.1.

These security concerns raised by Applicant's foreign associates may be mitigated when it is determined they 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 involved and loyalty to the U.S. MC E2.A2.1.3.1. Applicant's foreign associates are not "agents of a foreign power." *See* 50 U.S.C. § 1801(b). But Applicant has been unable to show that his foreign associates are not in a position of vulnerability.

If considered individually, the alleged disqualifying information would not rise to the level of a security concern. But it is the totality of the ties to persons who are citizens or residents of a foreign country that are important. *See* ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 23, 2003).

Determining suitability for a security clearance requires a predictive judgment--it is an attempt to determine who might pose a security risk at some future time, based on certain established guidelines. As noted above, the decision to deny an individual a security clearance is not a judgment of an applicant's loyalty to the U.S. Exec. Or. 10865 § 7. It is merely a determination the applicant has not met the strict guidelines set out by the President and the Secretary of Defense. In considering all the evidence, including the nature of the government of Iran and its relationship with the U.S., and the nature of Applicant's ties to associates in Iran, I find against Applicant on ¶ 2.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

DECISION

In light of all of 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.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

Program (Jan. 2, 1992), as amended and modified (Directive).

2. The SOR did not allege his aunt, daughter's husband, or his brother's wife as disqualifying conditions. Nevertheless, they are facts which contribute to an overall evaluation of the possible vulnerability of Applicant.