

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant emigrated from Iran to the U.S. in 1996 and became a U.S. citizen in 2003. Nevertheless, he retains his Iranian passport. His wife and parents are permanent U.S. residents, but Iranian citizens. Applicant's in-laws are citizen residents of Iran. Applicant's parents, wife, and children are currently in Iran. Applicant failed to mitigate the foreign preference and foreign influence security concerns. Eligibility for an ADP II/III position is denied.

CASENO: 03-11339.h1

DATE: 09/20/2004

DATE: September 20, 2004

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 03-11339

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant emigrated from Iran to the U.S. in 1996 and became a U.S. citizen in 2003. Nevertheless, he retains his Iranian passport. His wife and parents are permanent U.S. residents, but Iranian citizens. Applicant's in-laws are citizen residents of Iran. Applicant's parents, wife, and children are currently in Iran. Applicant failed to mitigate the foreign preference and foreign influence security concerns. Eligibility for an ADP II/III position is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to find Applicant eligible to occupy an information systems position designated ADP II/III to support a contract with the Department of Defense.⁽¹⁾ On 16 December 2003, DOHA issued a Statement of Reasons⁽²⁾ (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 20 January 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 20 May 2004. On 22 June 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to find Applicant eligible for occupying an information systems position. DOHA received the hearing transcript (Tr.) on 1 July 2004.

FINDINGS OF FACT

Applicant is a 43-year-old native of Iran. He works for a defense contractor as a computer technician.

Applicant immigrated to the U.S. in January 1996. Ex. 1 at 1. He returned to Iran from March to May 1997, September 1997 to March 1998, September to October 1999, March to April 2000, March to April 2002, and August to November 2002. *Id.* at 4-5. Applicant is married to an Iranian citizen and they have two children who were born in Iran. Applicant brought his wife and two daughters to the U.S. in December 2002. Ex. 2 at 1. Applicant became a U.S. citizen in February 2003 and his daughters, now 14 and 8 years old, were naturalized a few months later. *Id.*; Ex. 3 at 6. Applicant obtained a U.S. passport in June 2003. *Id.* at 7. Applicant has not been back to Iran since he brought his wife and

children here, and he does not intend to go back. *Id.* at 4. Nevertheless, he has maintained his Iranian passport that does not expire until 27 November 2004. *Id.* at 7. Although he considers the U.S. his country, he is not sure he will surrender his Iranian passport. Tr. 12.

Applicant's wife is now a permanent U.S. resident. She and the children visited Iran between 30 May and 18 August 2004. Tr. 14. Applicant's parents and brothers are also U.S. permanent residents. His parents returned to Iran five or six months ago to care for Applicant's ill grandmother. Tr. 8. Applicant's sister and other relatives are citizen residents of Iran, as are his wife's parents. Tr. 8, 16. Applicant's wife is very close to her parents. Tr. 15. Applicant's wife has sold her apartment in Iran. Tr. 18.

Applicant and his wife own a home in the U.S. They have no foreign investments or banks accounts. Tr. 19. Applicant could possibly inherit a share of his parent's home in Iran. Tr.18.

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 restricted eligibility for access to classified information 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

Guideline C--Foreign Preference

In the SOR, DOHA alleged Applicant exercised dual citizenship for Iran and the U.S. (¶ 1.a) and possessed an Iranian passport (¶ 1.b). 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 by substantial evidence and Applicant's admissions that he possesses an Iranian passport. DC E2.A3.1.2.2. The possession of a foreign passport is the exercise of dual citizenship. DC E2.A3.1.2.1; *see* ISCR Case No. 01-02270 (Aug. 29, 2003). A clearance must "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." *emo.* from Arthur L. Money, Asst Sec. Def. Command, Control, Communications, and Intelligence, to Directors of Defense Agencies, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline* (Aug. 16, 2000). Applicant's failure to provide evidence he surrendered his Iranian passport to the issuing authority precludes me from finding for him on ¶ 1.

Guideline B--Foreign Influence

In the SOR, DOHA alleged Applicant's wife and two children were citizens of Iran residing in the U.S. (¶ 2.a); his parents, who are permanent U.S. residents, are citizens and residents of Iran (¶ 2.b); his father-in-law is a citizen resident of Iran (¶ 2.c); Applicant traveled to Iran for extended stays in 1997, 1997-98, September 1999, March 2000, and October 2002 (¶ 2.d); and his wife owns an apartment in Iran (¶ 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 evidence of record clearly established that Applicant's wife and parents are permanent U.S. residents, but Iranian citizens; his in-laws are citizen residents of Iran; and he traveled to Iran on several occasions. A security concern is raised when an applicant has immediate family members, or persons to whom the applicant has close ties of affection or obligation, are citizens, resident, or present in a foreign country. DC E2.A2.1.2.1. There is a rebuttable presumption that an applicant has ties of affection for, or obligation to, the immediate family members of his spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002).

It is a mitigating condition if the immediate family members are not agents of a foreign power and are not in a position to be exploited by a foreign power in a way that could force the applicant to choose between loyalty to the family members and loyalty to the U.S. Although Applicant's family members are not agents of a foreign power, they are in a vulnerable position. The U.S. Government does not have diplomatic relations with Iran and recent tensions have "increased the potential threat to U.S. citizens and interests abroad posed by those who oppose U.S. policy." Ex. 5.

The evidence established Applicant's children are now U.S. citizens, his travels to Iran were before he became a U.S. citizen, and his wife no longer owns an apartment in Iran. Although I have do doubt Applicant is a loyal U.S. citizen, the presence of members of his immediate family in Iran for substantial periods of time put him in a position of vulnerability. I find against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against 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: For Applicant

Subparagraph 2.e: For 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 Applicant eligibility to occupy an ADP II/III position. Eligibility is denied.

James A. Young

Administrative Judge

1. Department of Defense Regulation 5200.2-R, *Personnel Security Program* ¶ C3.6.15 (Jan. 1987), as amended and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* ¶ 2.4 (Jan. 2, 1992), as amended and modified (Directive). The rules for security clearance cases are applied to ADP trustworthiness determinations.

2. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Directive.