

DATE: November 16, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13363

ECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a dual citizen of the U.S. and Iran. Applicant was born in the U.S. Applicant's immediate family are Iranian citizens. His father lives in the United Arab Emirates (UAE), and his mother divides her time between the U.S. and the UAE. Applicant's grandmothers are citizens of Iran and resident there. Applicant obtained an Iranian passport in 1998 and used it twice to travel to the UAE and Iran. Applicant has not surrendered the Iranian passport, even though it expired in 2003. Applicant did not mitigate the foreign preference or the foreign influence security concerns. Clearance is denied.

STATEMENT OF THE CASE

On February 17, 2004, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personnel security Guideline C (Foreign Preference) and Guideline B (Foreign Influence) 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 Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated March 9, 2004, Applicant responded to the SOR allegations. On August 16, 2004, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) [\(U\)](#) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM within the scheduled due date of September 27, 2004. The case was assigned to me on October 12, 2004.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR. Those admissions are incorporated herein as findings of fact. 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:

Applicant is 27 years old and was born in the United States to Iranian parents who were studying in the U.S. Applicant has U.S. citizenship. At the age of five (1982), he moved to Iran. His parents later moved to the United Arab Emirates (UAE). In 1995 Applicant returned to the U.S. to attend college. He is single and works for a defense contractor. Applicant obtained a renewal of his Iranian passport in 1998 and it expired in 2003. Applicant used the Iranian passport to travel to Iran to visit his elderly grandparents, who are citizens of Iran and live there. Applicant has not surrendered this passport to the appropriate issuing authority. Applicant asserts he will not renew that passport, and is willing to relinquish it. Applicant also possesses a U.S. passport. (Exhibits 3, 5, and 6)

Applicant's mother moved to the U.S. sometime after Applicant submitted his security clearance application (SCA) in July 2001. She travels back and forth to the UAE to visit her husband, whose business is located there. He sells equipment. Applicant's father may move to the U.S. someday. Applicant speaks telephonically with his father weekly. Applicant is unaware of his parents' intention regarding applying for U.S. citizenship. His parents own a home in the U.S. His brother is a college student in the U.S. with a student visa. Applicant traveled to the UAE in 1999 and Iran in the spring of 2001. (Exhibits 5 and 6)

Iran and the U.S. have strained diplomatic relations. The U.S. State Department has issued a travel warning to U.S. citizens contemplating travel to Iran. The U.S. Department of State identified Iran as "the most active state sponsor of international terrorism." Exhibits 7 and 8)

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 judgement, 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* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

GUIDELINE C: Foreign Preference:

The Concern: 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. Directive ¶ E2.A3 .1.1.

Conditions that could raise a security concern and may be disqualifying include:

The exercise of dual citizenship. Directive ¶ E2.A3.1.2.1.

Possession and/or use of a foreign passport. Directive ¶ E2.A3.1.2.2.

Conditions that could mitigate security concerns include: E2.A3.1.3.

Dual citizenship is based solely on parents' citizenship or birth in a foreign country. Directive ¶ E2.A3.1.3.1.

Individual has expressed a willingness to renounce dual citizenship. Directive ¶ E2.A3.1.3.4.

GUIDELINE B: Foreign Influence

The Concern: 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. Directive ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include:

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. Directive ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

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. Directive ¶ E2.A2.1.3.1.

The memorandum dated August 16, 2000, signed by Assistant Secretary of Defense Arthur L. Money (Money Memo), is additional guidance regarding "the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The memorandum requires the current possession or use of a foreign passport, and that fact may be a disqualifying condition. (Exhibit 9)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Considering Guideline C, the Government has clearly shown that Applicant is a dual citizen of the U.S. and Iran, and that he has an expired Iranian passport. Applicant exercised dual citizenship by renewing the Iran passport and using it to travel to the UAE and Iran. Even though the Iranian passport has expired, Applicant has not surrendered it to the Iranian government. Disqualifying Conditions (DC) 1 and DC 2 apply.

Mitigating Conditions (MC) 1 and 4 might apply. Applicant obtained his Iranian citizenship because his parents are Iranian citizens. However, at the age of 21, Applicant renewed that passport on his own initiative and used it to travel to the UAE and Iran, thereby exercising his dual citizenship and in effect reaffirming it. That action is more than merely obtaining the status of Iranian citizenship through a person's parents' citizenship. Consequently, MC 1 does not apply.

At present, Applicant stated he would not renew the Iranian passport, but has not surrendered it even though it is expired, as the Money Memo requires. His Iranian passport only expired last year. Applicant is willing to renounce Iranian citizenship, although he has taken no overt actions to accomplish this expressed intent. The promise of future actions are not sufficient to invoke the MC 4.

The Money Memo applies to this situation because Applicant could renew the expired passport and has not surrendered it in accordance with the requirements of the Money Memo. Applicant obtained an Iranian passport while a U.S. citizen. The Money Memo further states "consistent application of te guideline requires 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 submitted no evidence that he surrendered the Iranian passport, even though it expired, or that he had official U.S. government approval for the use of the Iranian passport. Therefore, I conclude Guideline C against Applicant. ISCR Case No. 01-24306, September 30, 2003.

Regarding Guideline B, the applicable DC is DC 1 (close relatives are citizens of a foreign country, or are resident in a foreign country). Applicant's parents are not citizens of the U.S. His father spends little time in the U.S., and his mother resides here as a

resident alien for only part of each year, and the other portion of each year she travels to the UAE to visit her husband. Applicant's grandparents are citizens of and reside in Iran. His brother is in the U.S. only on a student visa, and is a citizen of Iran. These connections to Iran are close and continuous.

The MC that might apply is MC 1. The burden is on Applicant to show his relatives are not agents of the Iranian government. Applicant must also show his relatives are not in a position to be exploited by the Iranian government in such a way that Applicant could be forced to choose between the family members and his loyalty to the U.S. Applicant has not met that burden. His association with the U.S. is really only since 1995 when he returned to attend college. His father is in business in the UAE and could be exploited by the Iranian government. Applicant's grandparents live in Iran and could be exploited. Applicant traveled to Iran to visit them. He has affection for them that could place him in a position to choose between his grandparents and his loyalty to the U.S. Applicant has not shown his grandparents could not be exploited. Therefore, I conclude Guideline B against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: 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.: Against Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge

1. The Government submitted nine exhibits in support of the SOR.