

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is a 44-year-old naturalized citizen of the U S. He was born in Iran, came to the U.S. in 1979 as a student and became a citizen in 1988. Applicant parents and brothers live in Iran. Applicant stays in regular contact with his family. Applicant applied for an Iranian identification card, after he became a U.S. citizen, so as to assist his family in receiving extra rations from the Iranian government. Applicant has failed to mitigate the security concerns. Clearance is denied.

CASENO: 03-14242.h1

DATE: 01/31/2005

DATE: January 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-14242

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44-year-old naturalized citizen of the U.S. He was born in Iran, came to the U.S. in 1979 as a student and became a citizen in 1988. Applicant parents and brothers live in Iran. Applicant stays in regular contact with his family. Applicant applied for an Iranian identification card, after he became a U.S. citizen, so as to assist his family in receiving extra rations from the Iranian government. Applicant has failed to mitigate the security concerns. Clearance is denied.

STATEMENT OF THE CASE

On October 29, 2004, 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. [\(U\)](#) 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 November 4, 2004, and requested a hearing. In his SOR response, Applicant admitted all the allegations contained in the SOR.

The case was assigned to me on December 17, 2004. A notice of hearing was issued on December 22, 2004, scheduling the hearing for January 12, 2005. The hearing was conducted as scheduled. The government submitted eight exhibits that were marked as Government Exhibits (GE) 1-8. They were admitted without objection into the record. Applicant testified on his own behalf, and submitted eight exhibits that were marked as Applicant's exhibits (AE) A-H. The exhibits were admitted without objection. The transcript was received on January 21, 2005.

FINDINGS OF FACT

Applicant is a 44-year-old engineer, who has worked for a defense contractor for six years. Applicant was born in Iran and upon completing high school came to the U.S. to attend college. He graduated from college in 1985, and remained in U.S. He became a naturalized citizen in 1988. Applicant has two children from his first marriage, who were born in the U.S. Applicant retained custody of them when he and their mother divorced. Applicant remarried in 1999. Applicant's present wife is from Turkey. She became a naturalized citizen in 2004.

Applicant's parents live in Iran. Applicant's father is a retired police officer. He worked most of his career under the former Iranian regime, however he completed the final three years under the present regime. Applicant's father receives a pension for his police service through the government. Applicant's mother is a life long homemaker. Applicant has two brothers who live in Iran. Applicant's younger brother has a degree in chemistry and works for a chemical company. Applicant does not know what relationship the company may have to the government. Applicant's older brother is married, has two children, and is an agricultural engineer. He works for a company doing research on agriculture improvement. Applicant does not know what relationship the company may have to the government. Applicant has not seen his older brother since leaving Iran in 1979.

Applicant "tries to be a good son" and contacts his parents 1-2 times a month by telephone and corresponds with them in writing 1-2 times a year. Applicant's parents visited him in the U.S. in 1987, for 2 to 3 months, and intend on visiting him again. Applicant and his wife met his parents and his younger brother for a visit in Turkey in 2000. Applicant also met his new in-laws while

visiting Turkey. Applicant does not own any property in Iran. Applicant owns his own home in the U.S.

Applicant communicates with his brothers every 2-3 months by telephone and 1-2 times a year by written correspondence. Applicant sends presents to his relatives in Iran for traditional events, such as birthdays, anniversaries, and the New Year.

Applicant has not returned to Iran since he left in 1979. Applicant renewed his Iranian passport in 1984 and it expired in 1987. He did not renew it again. Applicant kept his expired passport to show who he is and where he came from, and as a souvenir of his past. Applicant testified he can not deny who he is and where he came from. He loves the beauty of Iran, but does not like the government. He is against the country being governed by religion. Applicant has no intention of renewing his Iranian passport. Applicant travels on his American passport.

Applicant has an Iranian identification card that he obtained at his father's request. Applicant obtained the card approximately 13-14 years ago. The identification card is used in Iran in lieu of a birth certificate. It is used to show Applicant is an Iranian citizen. It was required by the Iranian government to verify members of a household. The number of members in a household determined how many rations the household could obtain. Applicant obtained the card to increase the rations permitted for his father's household and help his parents.

Applicant testified if the Department of Defense wished him to renounce his Iranian citizenship he would be more than willing to do so, if it will assist him in obtaining a security clearance. Applicant testified it would be difficult to take arms up against Iran because of his Iranian heritage, but he made a decision to be a U.S. citizen and if asked by the U.S. he would comply.

Applicant provided character letters from coworkers and supervisors reflecting his loyalty, dependability and outstanding work ethic. Applicant is a professional who is hard working and can always be counted on to complete the work assignment.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. 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, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to

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grant or continue a security clearance for an applicant. The government has the burden of proving controverted facts. (3) The burden of proof is something less than a preponderance of evidence, (4) although the government is required to present substantial evidence to meet its burden of proof. (5) Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. (6) 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. (7) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (8)

No one has a right to a security clearance (9) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (10) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (11) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (12) 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.

CONCLUSION

Under Guideline B, 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

obligations 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Based on all the evidence, under Guideline B, I find 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*, applies in this case. Applicant's parents and brothers are citizens and residents of Iran. I have considered all the mitigating conditions under Guideline B and specifically considered MC 3: *Contact and correspondence with foreign citizens are casual and infrequent*, and conclude it does not apply. Applicant remains close to his parents and brothers living in Iran. He contacts them on a regular basis, sends gifts and they visit each other. Applicant assisted his parents by obtaining an Iranian identification card, so as to provide them extra rations. Applicant considers his actions, communications and correspondence as acting like a good son. Applicant's affection and sense of obligation to his family in Iran is more than casual and infrequent. MC 1 does not apply.

I have considered DC 3: *Relatives, cohabitants, or associates who are connected with any foreign government*, and conclude it does not apply. Applicant's father receives a pension from the government and his brothers work in industry and not for the government. The connection between Applicant's family members and the Iranian government is tenuous at best, and likely no more than most citizens of Iran.

Under Guideline C, a security risk may exist 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 interest of the United States.

Based on all the evidence under Guideline C, I find DC 1: *The exercise of dual citizenship*; and DC 6: *Using foreign citizenship to protect financial or business interests in another country*, apply in this case. Applicant obtained an Iranian identification card to prove to the Iranian government, he was an Iranian citizen, and thereby obtain extra rations for his family living in Iran. He made this affirmative application after he was a naturalized citizen of the U.S. This action is an exercise of his Iranian citizenship and reflected a specific financial gain for his family.

I have considered all the mitigating conditions under Guideline C, and specifically considered MC 1: *Dual citizenship is based solely on parents' citizenship or birth in a foreign country*; MC 2: *Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship*; and conclude they do not apply. Applicant's dual citizenship with Iran is based upon more than just his parents' citizenship or his birth there. Applicant affirmatively exercised his citizenship rights with Iran, after becoming a U.S. citizen by applying for and using an Iranian identification card. I have also considered MC 4: *Individual has expressed a willingness to renounce dual citizenship*, and conclude, although Applicant may have nominally expressed a willingness to renounce his Iranian citizenship, it cannot be premised on conditions precedent to renunciation, i.e., if asked by DoD and if it will help him get a security clearance, he would renounce his citizenship.

Applicant retained his Iranian passport after it had expired. Under Guideline C, DC 2: *Possession and/or use of a foreign passport*, is applicable. However, the SOR failed to alleged this information in accordance with a memorandum issued by Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, Arthur L. Money, dated August 16,2000, (Money Memorandum). That Memorandum required that a security clearance be denied or revoked for an Applicant with a foreign passport "unless the applicant surrenders the foreign passport...." Surrender of a passport contemplates returning it to the issuing authority. Because the SOR is deficient in alleging such and thereby providing Applicant with proper notice and due process, I have not considered this fact when considering the "whole person" concept or for arriving at my ultimate conclusion.

Applicant pledged allegiance to the U.S. and is committed to remaining in this country, but it is difficult for him to

extricate himself from his family and cultural bond with Iran. Applicant testified honestly that it would be difficult for him to bear arms against Iran, but he would do it. Due to the close familial contacts he has with his family living in Iran his feelings are understandable.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case, including Applicant's appearance, demeanor and credibility while testifying. I have also considered him under the "whole person" concept. I am persuaded by the totality of the evidence available in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant has failed to mitigate the security concerns regarding foreign influence and foreign preference. Accordingly, Guideline B and Guideline C are decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Guideline B AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Paragraph 2 Guideline C AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.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.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p.3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
9. *Egan*, 484 U.S. at 531.
10. *Id.*
11. *Id.*, Directive, Enclosure 2, ¶ E2.2.2.
12. Executive Order 10865 § 7.