

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant and her husband are naturalized U.S. citizens who were born and raised in Iran. Applicant's mother is a resident of the U.S., but travels to Iran on occasion. Applicant obtained and used an Iranian passport after becoming a U.S. citizen and obtaining a U.S. passport. She traveled to Iran on the passport in 2000 and 2002, but has since relinquished it to the appropriate Iranian authorities. Applicant's mother travels to Iran on occasion. Applicant's aunt, mother-in-law, sister-in-law, and four brothers-in-law and their wives are all citizen residents of Iran. Applicant mitigated foreign preference security concerns, but not foreign influence security concerns. Clearance is denied.

CASENO: 03-16154.h1

DATE: 09/28/2005

DATE: September 28, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16154

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant and her husband are naturalized U.S. citizens who were born and raised in Iran. Applicant's mother is a resident of the U.S., but travels to Iran on occasion. Applicant obtained and used an Iranian passport after becoming a U.S. citizen and obtaining a U.S. passport. She traveled to Iran on the passport in 2000 and 2002, but has since relinquished it to the appropriate Iranian authorities. Applicant's mother travels to Iran on occasion. Applicant's aunt, mother-in-law, sister-in-law, and four brothers-in-law and their wives are all citizen residents of Iran. Applicant mitigated foreign preference security concerns, but not foreign influence security concerns. 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 19 August 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 24 August 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 20 May 2005. On 23 June 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 29 June 2005.

I kept the record open to permit Applicant to submit a document-a letter from an industrial security representative of Applicant's employer who observed Applicant return her Iranian passport via mail to the Iranian Interests Section of the Embassy of Pakistan in Washington, DC. Department Counsel had no objection, and the document was admitted as Ex. A.

FINDINGS OF FACT

Applicant is a 54-year-old software quality engineer for a defense contractor. Ex. 1 at 1. Applicant was born in Iran, of Iranian parents, in 1951. Applicant's father worked for the British oil refinery in Abadan, an island in the Shatt-al-Arab in Southern Iran. She was brought up very British and never considered herself to be close to the Iranian culture. In 1970, she left Iran to go to school in England. She returned to Iran in 1974, where she worked as a secretary and office manager.

Applicant's husband was born and raised in Iran. He first entered the U.S. in 1964 to attend college, after he had performed his compulsory two years of military service in the Iranian Army. He received his degree and returned to Iran about 1977. He worked in the Iranian Telephone Company. In 1980, he married Applicant. The couple has two children, both born in Iran. In May 1985, Applicant's husband left Iran permanently and moved to the U.S. Applicant and her children remained in Iran until December 1985 when they entered the U.S. to join him. Ex. 1 at 5; Ex. 2 at 3; Tr. 18.

Before she left Iran, Applicant was confronted a few times by "revolutionary religious fanatics." Ex. 2 at 1-2. One day a family friend drove Applicant and her son home from visiting family members. They were stopped and Applicant was held in jail where she was interrogated for seven or eight hours because she was with a man who was not her husband. Similar incidents occurred on at least two occasions when she was with male cousins. She was afraid and felt threatened by these "religious fanatics." *Id.*

After her arrival in the U.S., Applicant worked in a fast-food restaurant and obtained her master of science degree. Since then, she has worked as a business analyst and as a software test engineer. Ex. 2 at 3.

Applicant became a U.S. citizen in July 1989 and received a U.S. passport issued in January 1996. Both her husband and children are naturalized U.S. citizens. Ex. 2 at 3; Tr. 32. She applied for an Iranian passport, and it was issued to her on 21 February 2000 and expired on 20 February 2005. She obtained the passport because the U.S. does not have diplomatic relations with Iran. Therefore, she could not travel to Iran on her U.S. passport. In June 2000, she traveled from the U.S. to Sweden to visit two cousins and then on to Tehran, Iran, for 16 days to pay her respects to her mother-in-law after the recent death of her (the mother-in-law's) husband and to visit the grave of a recently deceased aunt. In June 2002, she again traveled to Iran for 16 days to visit her only living aunt, who is a citizen resident of Iran. Applicant speaks with her aunt via telephone once in a while. Her last telephone call was approximately two months before the hearing. Her husband traveled to Iran on only one occasion-in 2000 to visit his sick father, who is now deceased. Ex. 2 at 4; Tr. 23.

Applicant's father is deceased. Her mother, who is 75 years old, came to the U.S. six years after her daughter, is a permanent U.S. resident and resides with Applicant and her husband. Tr. 20. She was unable to pass the citizenship exam, but will reapply in November. Applicant does not have any siblings. Tr. 20; Ex. 2 at 2. Applicant's mother visits Iran on occasion, and was in Iran for her brother's funeral at the time of the hearing. Tr. 34-35.

Applicant's husband's mother, sister, four brothers and their wives are all citizen residents of Iran. They are trying to get out of the country, but it is difficult. They have built their lives there and would be unable to come to the U.S. unless Applicant and her husband can support them, which they cannot. Tr. 21. Applicant's mother-in-law is 96 years old. Applicant's husband talks with his mother by telephone almost every week. Applicant's husband speaks with his brothers and their family over the telephone monthly. One of the brothers' wives works for the city government of Tehran, Iran. Ex. 2 at 2; Tr. 30.

Applicant has several cousins who emigrated from Iran to the U.S. and are U.S. citizens. She talks to them via telephone almost every month. Tr. 32.

Applicants older son worked for a Department of Defense contractor on a computer project for which he held a security clearance. When the project was completed, he was laid off. Applicant's other son works on and off, but has not decided what to do with his life. Tr. 33. Neither son has an Iranian passport, but when they were very small, Applicant's mother took them to Iran for 30 days to visit their other grandparents. Tr. 34. At the time of the hearing Applicant's mother was in Tehran because her (the mother's) brother died. Tr. 35.

Neither Applicant nor her husband provide their Iranian relatives with any financial support and have no financial interests outside the U.S. Tr. 30-31. Applicant submitted her expired Iranian passport to the Iranian Interests Section of the Embassy of Pakistan and does not intend ever to return to Iran. Ex. A.

Since the 1979 revolution in Iran, the U.S. and Iran have been adversaries. Impediments to improved relations include Iran's "attempting to acquire weapons of mass destruction, supporting terrorist groups, failing to extradite senior al Qaeda leaders, repressing its own population, and pressuring such regional U.S. allies as the United Arab Emirates, Bahrain, Qatar, and Azerbaijan." Ex. 5 at 4.

POLICIES

"[No 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 applied for and was issued an Iranian passport after becoming a U.S. citizen (¶ 1.a), possessed the passport, which was due to expire in February 2005, as late as 23 January 2004 (¶ 1.b), and used the passport to enter Iran in 2000 and 2002 (¶ 1.c). Applicant neither admitted nor denied these allegations. When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., then she 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 Department of Defense must deny or revoke the security clearance of any applicant who fails to surrender her foreign passport unless she obtains official approval for its use from the appropriate agency of the United States Government. Memo. 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).

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline C. Applicant exercised dual citizenship (DC E2.A3.1.2.1) by possessing and using a foreign passport (DC E2.A3.1.2.2). Iran does not have diplomatic relations with the U.S. and an Iranian-American traveling there on U.S. passport can expect difficulties. Ex. 6 at 1-2. But as the Money Memo makes clear, Guideline C's prohibition on the possession or use of a foreign passport is only mitigated by the approval of such possession or use by the U.S. Government. It contains no mitigating condition related to an applicant's "personal convenience, safety, requirements of foreign law, of the identity of the foreign country." There is no evidence the U.S. Government approved Applicant's possession and use

of the Iranian passport.

If an applicant surrenders a foreign passport, the Judge still 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. 01-22606 at 8 (App. Bd. Jun. 30, 2003). After considering all of the circumstances of this case, I find for Applicant. I am convinced she held the foreign passport only to visit her relatives. She has since surrendered her passport to the appropriate authorities, does not consider herself an Iranian national, and does not intend to return to Iran in the future. MC E2.A3.1.3.4 applies.

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's mother is a citizen of Iran residing in the U.S. (§ 2.a); her mother-in-law (§ 2.b), four brothers-in-law and four sisters-in-law (§ 2.c), and aunt (§ 2.f) are citizen residents of Iran; a sister-in-law is employed by the city government of Tehran (§ 2.d); and Applicant traveled to Iran in 2000 and 2002 (§ 2.e). Applicant admitted each of the allegations. A security risk may exist when member's of 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 constitute substantial evidence of a potentially disqualifying condition under Guideline B-Applicant has persons to whom she has an immediate family member-her mother-and others to whom she has close ties of affection or obligation-her aunt, mother-in-law, sister-in-law, and four brothers-in-law to whom she has ties of affection or obligation-who are present in, citizens, or residents of Iran. DC E2.A2.1.2.1. There is a rebuttable presumption that an applicant has ties of affection for, or obligation to, her husband's immediate family members. ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002).

While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb. 8, 2001).

As the evidence established a potential disqualifying condition, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive E3.1.15.

The security concerns raised by Applicant's foreign associates may be mitigated when it is determined they 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 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).

In assessing the vulnerability to exploitation of Applicant's associates, it is helpful to consider several factors. Even friendly nations can have profound disagreements with the U.S. over matters they view as important to their vital interests or national security. We know friendly nations have engaged in espionage against the U.S., especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). The nature of a nation's government, its relationship with the U.S., and its human rights record are all relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

The evidence clearly established Applicant is a loyal, trustworthy U.S. citizen. Nevertheless, she is in a position of vulnerability-she could be placed in the vulnerable position of having to choose between her loyalty to the U.S. and her loyalty to her associates in Iran. MC 1 "hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather hinges on the concept that applicant should not be placed in a position where he is forced to make such a choice." ISCR Case no. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005).

Applicant promptly reported to proper authorities all contacts with persons from a foreign country as required. MC E2.A2.1.3.4. She and her husband have no financial interests in Iran. MC E2.A2.1.3.5.

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. 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.

I find for Applicant on ¶ 2.e. Traveling to a foreign country is not a disqualifying condition. It is merely evidence of Applicant's ties to the foreign country and its citizens. I find against Applicant on the remainder of the allegations under ¶ 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

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: For Applicant

Subparagraph 2.f: Against Applicant

DECISION

In light of all of the circumstances 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. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).