

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant's foreign preference, including his dual citizenship, and his foreign influence, including foreign family members have been mitigated. Clearance is granted.

CASENO: 03-17853.h1

DATE: 06/23/2005

DATE: June 23, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-17853

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's foreign preference, including his dual citizenship, and his foreign influence, including foreign family members, has been mitigated. Clearance is granted.

**STATEMENT OF THE CASE**

On June 10, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on July 28, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 29, 2004. A notice of hearing was issued on December 16, 2004, scheduling the hearing for January 20, 2005. At the hearing the Government presented six exhibits. The Applicant presented three exhibits and testified on his behalf. The official transcript (Tr.) was received on February 8, 2005.

## FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 47 years of age and holds a Bachelor's Degree in Electrical Engineering. He is employed as a Computer Electronic Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of Iran and the United States. He was born in Iran in 1958. In 1976, at the young age of eighteen, he came to the United States to pursue a college education. He was planning on returning to Iran after finishing college, however when he learned that the Mullahs took over in Iran, (the revolution began) and it was no longer a safe place to live, he decided not to return. He graduated from college in 1982, and married a United States citizen. They have three children who are native born United States citizens. The Applicant became a United States citizen in 1992. (*See Applicant's Exhibit* ).

The Applicant returned his expired Iranian passport to the Iran Interests Section on June 18, 2004. (*See Applicant's Exhibit A*).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's mother and five of his six siblings are citizens of and reside in Iran. The Applicant's mother is a permanent legal resident of the United States. She divides her residence between Iran the United States. She is elderly and has grandchildren in both the United States and Iran. The Applicant's five siblings, although citizens of Iran, have no ties there whatsoever. (Tr. p. 26). They want to come to the United States. The Applicant's siblings in Iran have had various professions, but none of them have ever been affiliated with, employed for, or agents of, the Iranian Government. The Applicant has one other sibling who is a citizen of Iran, but who is also a permanent legal resident of the United States. She is waiting for the United States residency time requirement in order to apply for her United States citizenship. The Applicant explained that for the past ten years he has tried all legal means to bring his family in Iran to the United States, but there have been many obstacles. (Tr. p. 23). His father has passed away.

The Applicant is very involved in his local community. He donates money to his children's school and his daughter's softball league. He has been a volunteer coach for his daughter's soccer activities. He has also been a Judge for a prestigious University's Science Fair in the United States.

The Applicant owns a house, worth just under a million dollars, cars, furniture, and a 401K in the United States. He has no financial interests in Iran.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Preference

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.

### Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport.

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

Condition that could mitigate security concerns:

1. 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 the loyalty of the person(s) involved and the United States.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's

conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## **CONCLUSIONS**

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant was a dual citizen of Iran and the United States who possessed an Iran passport. In compliance with the

provisions of the Money Memorandum, the Applicant has surrendered his foreign passport to the Iranian Interests Section. He also understands that by taking the oath of allegiance to the United States, he has renounced his Iranian citizenship. Under the circumstances, the Applicant has done everything possible to be in compliance with the requirements of the directive and the Money Memorandum. Accordingly, he has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the evidence establishes that he is not vulnerable to foreign influence. The Applicant is a United States citizen, married to a United States citizen. He has three children who are native born American citizens. Although five of the Applicant's six siblings are citizens and residents of Iran, the Applicant has minimal contact with them. His mother, who is also a permanent legal resident of the United States, divides her time between the United States and Iran in order to spend time with her grandchildren. Besides his mother, the Applicant's has very few contacts, if any, with his foreign relatives and they are not of a nature to influence his security worthiness. There is no evidence in the record that any of his family members have any connection with the Iranian Government, or are in a position to be exploited by the Iranian Government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. The Applicant has no assets in Iran. Based on the foregoing, this does not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C and Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

## **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

2.b.: For the Applicant



2.c.: For the Applicant

**DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge