

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant possesses an expired French passport, an active U.S. passport, and an active

Iranian passport. His parents are citizens and residents of Iran and reside in the U.S. as registered aliens for approximately five months each year. Applicant's sister is a citizen and resident of Iran. Applicant refuses to relinquish his Iranian passport, which will not expire until 2014. Clearance

is denied.

CASENO: 04-00092.h1

DATE: 02/08/2006

DATE: February 8, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00092

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant possesses an expired French passport, an active U.S. passport, and an active

Iranian passport. His parents are citizens and residents of Iran and reside in the U.S. as registered aliens for approximately five months each year. Applicant's sister is a citizen and resident of Iran. Applicant refuses to relinquish his Iranian passport, which will not expire until 2014. Clearance

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STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 2, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (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 March 14, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me June 27, 2005. On November 2, 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. The Government called no witnesses, submitted three exhibits for admission to the record (Ex.s 1 through 3), and offered five documents for administrative notice, which were enumerated I through V. The Government's exhibits and documents for administrative notice were admitted to the record without objection. Applicant called no witnesses and submitted no exhibits. On November 17, 2005, DOHA received the transcript (Tr.) of the proceeding.

PROCEDURAL MATTERS

To conform the SOR with the evidence presented at the hearing, the Government moved to add a new subparagraph under Paragraph 1, Guideline C, as follows:

c. You possess an Iranian passport that was issued on December 14, 1996. This passport was set to expire on December 15, 2001. You renewed your Iranian passport in 2004. This passport is set to expire in 2014.

Applicant admitted the new allegation 1.c. under Guideline C. The amendment to the SOR was approved and admitted to the record of the hearing without objection.

FINDINGS OF FACT

The SOR contains three allegations of disqualifying conduct under Guideline C, Foreign Preference and four allegations of disqualifying conduct under Guideline B, Foreign Influence. Applicant admitted all allegations in the amended SOR. Applicant's admissions are incorporated as findings of fact.

Applicant is 55 years old. Since 2001, he has been employed as a senior assembly mechanic by a government contractor. He is married and the father of two children. (Ex. 1, 2.)

Applicant was born in Iran. He married his wife, a French citizen, in 1983. Applicant acquired French citizenship through his wife. The couple's two children were born in France in 1985 and 1988 and acquired French citizenship. (Tr. 45.) On August 8, 2000, Applicant acquired a French passport. His French passport expired in August 2005. He neither surrendered the French passport nor renewed it. (Ex. 1, 2; Answer to SOR; Tr 35.) Applicant and his wife consider themselves to be dual citizens of France and the U.S. (Ex. 3 at 1.) Applicant claims allegiance to the U.S. alone. While he says he is willing to renounce his French citizenship, he does not wish to under go the expense of doing so. (Answer to SOR at 1; Tr. 45.) Applicant's wife's parents are citizens and residents of France, as are his wife's sister and brother. (Ex. 3 at 3.)

In approximately 1984, Applicant began to work for an Iranian company, where he held "a respectably high position." (Answer to SOR at 2.) In 1995, he and his family emigrated to the U.S. Applicant continued to be employed by the

Iranian company until approximately 1997. In 1996 and 1997, he traveled to France to conduct business for his Iranian employer. (Ex. 3.) He also traveled to Iran in 1997 and remained there for two months to visit his parents. (Answer to SOR) Applicant possessed an Iranian passport that was issued in December 1996 and which was set to expire in December 2001.

Applicant became U.S. citizens in on October 26, 2000. In 2001 Applicant was issued a U.S. passport. (Ex. 2.) Applicant's two children hold French, Iranian, and U.S. passports. (Tr. 45-46.)

In 2004, Applicant renewed his Iranian passport. He traveled to Iran on the Iranian passport to visit his parents in 2004. (Tr. 38-39.) His Iranian passport will expire in 2014. At his hearing, Applicant stated he would not relinquish his Iranian passport because, if he did so, he would have great difficulty entering Iran to visit his family members. (Tr. 18; 29-30.)

Applicant's aged parents are citizens and residents of Iran. They have been granted resident alien status in the U.S. and live in the U.S. for as long as five months each year with one of Applicant's sisters, a U.S. citizen. (Answer to SOR; Ex. 1)

Applicant has a sister who is a citizen and resident of Iran. She is a retired teacher, and her husband is retired from a telephone company in Iran. (Tr. 37.) When Applicant's parents are in residence in Iran, he telephones them and his sister approximately every week or two and estimates he speaks with them about 40 times a year. (Tr. 37-38.)

I take administrative notice of a document entitled "Background Note: Iran," compiled by the Bureau of Near Eastern Affairs, U.S. Department of State, and dated August 2004. (Government Document II for Administrative Notice, at 6-7) "Background Note: Iran" states that the U.S. government prohibits most trade with Iran and objects to Iran's support for and involvement with international terrorism; its attempts to acquire nuclear weapons and other weapons of mass destruction; its support for violent opposition to the Middle East peace process; and its negative human rights record.

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.

In addition to the guidelines in the Directive, official DoD policy guidance must also be considered. Of particular relevance in this case is an August 16, 2000, memorandum from Assistant Secretary of Defense Arthur L. Money (Money Memorandum) clarifying the application of Guideline C, Foreign Preference, to cases involving an applicant's possession or use of a foreign passport.

Enclosure 2 of the Directive sets forth personal 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, and Applicant admitted, that he exercised dual citizenship with France and the United States (§ 1.a.); that, as of November 20, 2003, he possessed a French passport, issued on August 8, 2000, with an expiration date of August 7, 2005 (§ 1.b.); and that he had possessed an Iranian passport, issued on December 4, 1996, which expired December 15, 2001, and subsequently, in 2004, Applicant renewed his Iranian passport for a period of ten years (§ 1.c.).

A Guideline C security concern exists when an individual's conduct indicates a preference for a foreign country over the United States. A preference for another country could lead a person to provide information or make decisions that are harmful to the interests of the United States.

Applicant's admitted conduct raises security concerns under Disqualifying Conditions (DC) E2.A3.1.2.1., E2.A3.1.2.2., and E2.A3.1.2.9. of Guideline C. Applicant acquired French citizenship through marriage. Later, he emigrated from France and came to the US, where he applied for U.S. citizenship. Two months before becoming a naturalized U.S. citizen, Applicant renewed his French passport for a period of five years. After his naturalization as a U.S. citizen, Applicant did not renounce his French nationality or surrender his French passport, thereby retaining dual citizenship. He did not relinquish his French passport when he acquired his U.S. passport in July 2001. In 2004, Applicant renewed his Iranian passport for a period of ten years and, as a U.S. citizen, used the Iranian passport to enter Iran.

We turn to an examination of applicable mitigating conditions under Guideline C that pertain to the exercise of dual citizenship. An applicant may mitigate DC E2.A3.1.2.1. under Guideline C if he shows his dual citizenship is based solely on his parents' citizenship or birth in a foreign country. Mitigating Condition (MC) E2.A3.1.3.1. Applicant's French dual citizenship was based upon his marriage to a French citizen and not on his parents' citizenship or birth in a foreign country. Thus MC E2.A3.3.1. is inapplicable.

Under MC E2.A3.1.3.4., an applicant can mitigate the exercise of dual citizenship by expressing a willingness to renounce dual citizenship. Applicant retained his French passport after becoming a U.S. citizen. While he stated a willingness to renounce dual citizenship, he also stated he would not take the necessary steps to do so, including

surrender of his French passport, thereby rendering his expression of willingness meaningless. Accordingly, MC E2.A3.1.3.4. does not apply to Applicant's exercise of dual citizenship with France.

An applicant can mitigate an indicator of possible foreign preference if it occurred before obtaining U.S. citizenship (MC E2.A3.1.3.2.). While Applicant's expression of preference for French citizenship occurred before becoming a U.S. citizen, that expression continued after becoming a naturalized U.S. citizen and after obtaining a U.S. passport. Accordingly, MC E2.A3.1.3.2 does not apply to Applicant's case. The allegation at ¶ 1.a. of the SOR is concluded against the Applicant.

Possession and use of a foreign passport may be a disqualifying condition under ¶ E2.A.3.1.2.2. of Guideline C. In a memorandum (Money Memo), dated August 16, 2000, Assistant Secretary of Defense Arthur L. Money stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that 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 State Government.

Applicant presented no evidence that he had been granted approval by the U.S. government to possess and use his French and Iranian passports. Accordingly, SOR allegations 1.b. and 1.c. are concluded against the Applicant. His unwillingness to surrender his active Iranian passport precludes granting him a security clearance under the policy guidance of the Money Memo.

Guideline B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's parents are citizens and residents of Iran and reside in the U.S. as registered aliens for as long as five months each year (¶ 2.a.); that Applicant's sister is a citizen and resident of Iran (¶ 2.b.); that Applicant was employed by a company located in Iran from about October 1984 to about August 1997 and that this employment continued after Applicant's entry into the United States in 1995 (¶ 2.c.); and that Applicant traveled to Iran in about 1997 for two months (¶ 2.d.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the government of Iran has declared itself hostile to the United States by supporting international terrorism, seeking to acquire nuclear weapons and weapons of mass destruction, and by opposing, through violence, U. S. policies such as the Middle East peace process and human rights. These hostile actions by Iran directly threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of Iran could be vulnerable to coercion, exploitation, or pressure.

Applicant admits his parents and his sister are citizens and residents of Iran. His admission raises a security concern under Guideline B, Disqualifying Condition (DC) E2.A2.1.2.1. Applicant is close to his parents and his sister, and he communicates with them approximately every two weeks. The fact that he has immediate family members who are Iranian citizens and who reside in Iran could make Applicant vulnerable to coercion, exploitation, or pressure by a hostile foreign government.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the United States. Mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's parents and sister are agents of a foreign power, they are citizens of a totalitarian state with interests antithetical to the United States, and they could be exploited by the government of Iran in a way that could force Applicant to choose between loyalty to them and the United States. (ISCR Case No. 02-13595, at 4-5 (App. Bd. May 10, 2005) Accordingly, MC E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant's relationships with his parents and sister, who are citizens and residents of Iran, are based on ties of familial affection or obligation. He is in contact with his parents and sister at least once a month, and sometimes twice a month, and those contacts are neither casual nor infrequent. Accordingly, MC E2.A2.1.3.3. does not apply to Applicant's relationships with his close family members in Iran.

Applicant traveled to Iran in 1997 and 2004 to visit his parents and sister. In 1997 he remained in Iran for two months. After Applicant immigrated to the U.S. in 1995, he worked for two years for a company located in Iran. These facts raise security concerns under DC E2.A2.1.2.6. because they reflect conduct that could make Applicant vulnerable to

coercion, exploitation, or pressure by a foreign government hostile to the U.S. None of the mitigating conditions under Guideline B apply to Applicant's travel to and employment by a company located in Iran.

Nothing in Applicant's testimony suggested he was not a loyal American citizen and a credit to his adopted country. However, he was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, the Guideline B allegations in subparagraphs 2.a. through 2.d. of the SOR are concluded against the 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

Subparagraph 1.c.: 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 of 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.