

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant, a dual citizen of the United States and Iran, has acted in such a way as to indicate a preference for a country other than the United States. He applied for and was issued an Iranian passport, even though he was a United States citizen by birth, and he used the Iranian passport to enter and exit Iran. He has now relinquished his Iranian passport to the proper Iranian authorities. However, he failed to indicate a true willingness to renounce his Iranian citizenship. Applicant has a close relationship with his grandfather, who is a citizen and resident of Iran. Mitigation has not been shown. Clearance is denied.

CASENO: 04-02206.h1

DATE: 04/14/2005

DATE: April 14, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02206

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Edward W.Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a dual citizen of the United States and Iran, has acted in such a way as to indicate a preference for a country other than the United States. He applied for and was issued an Iranian passport, even though he was a United States citizen by birth, and he used the Iranian passport to enter and exit Iran. He has now relinquished his Iranian passport to the proper Iranian authorities. However, he failed to indicate a true willingness to renounce his Iranian citizenship. Applicant has a close relationship with his grandfather, who is a citizen and resident of Iran. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated August 23, 2004, to the Applicant which detailed 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on Foreign Preference (Guideline C) concerns related to his exercise of dual citizenship with the United States and Iran, and on Foreign Influence (Guideline B) concerns because of the foreign residency and citizenship of a close family member.

Applicant, acting *pro se*, filed a notarized response dated September 16, 2004, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

On November 3, 2004, this case was assigned to another Administrative Judge, but on January 7, 2005, because of caseload consideration, the case was reassigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on March 3, 2005, and the hearing was conducted on March 23, 2005.

At the hearing, Department Counsel offered seven documentary exhibits (Exhibits 1 through 7) and no witnesses were called. Applicant offered no documentary exhibits at the hearing, but offered his own testimony. The record was left open so that Applicant could offer proof that he had renounced his Iranian citizenship. After the hearing, Applicant offered a one page letter, which has been identified and entered into evidence with out objection as Exhibit A. The transcript (TR) was received on April 4, 2005.

FINDINGS OF FACT

The SOR contains two allegations, 1.a., and 1.b., under Guideline C and two allegations, 2.a. and 2.b., under Guideline B. Applicant admitted all of the SOR allegations. The admissions are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 24 year old employee of a defense contractor. He is not married. He received a masters degree in electrical engineering from a United States university.

Applicant was born in the United States. Both of his parents were born in Iran and moved to the United States in 1978.

Paragraph 1 (Guideline C - Foreign Preference)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has acted in such a way as to indicate a preference for another country over the United States.

Applicant applied for and was issued an Iranian passport on March 5, 2002, even though he was a United States citizen . He traveled to Iran in December 2003, and he used his Iranian passport to enter and exit Iran (Tr at 33) (Exhibits 1, 2, and 3).

Applicant's relinquished his Iranian passport in March 2004 to the Embassy of Pakistan (Exhibit 4). However, at that time he took no affirmative step to renounce his Iranian citizenship.

At the hearing, Applicant testified that he was willing to renounce his Iranian citizenship, and the record was held open for two weeks for Applicant to send to the proper Iranian authorities a letter indicating his renunciation of his Iranian citizenship (Tr at 39-43). Applicant submitted a post hearing letter to the Court in which he advised regarding his surrender of his Iranian citizenship, "The time and effort necessary to pursue that effort would be immense and unmanageable for me at this time." (Exhibit A).

Paragraph 2 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

Applicant's grandfather is a citizen and resident of Iran. He is in his 90s and long retired. Applicant is not aware of what his grandfather did for a living. He described his relationship with his grandfather as close, but Applicant claims that he only speaks to him when he is in Iran. Applicant has two uncles and two aunts, as well as cousins, who are citizens and residents of Iran. He has no contact with any of them (Tr at 28-31).

Applicant traveled to Iran on three occasions, when he was 13 and 15 years of age, and when he was an adult in 2003, as discussed above. He has no set plans to return to Iran in the future (Tr at 27, 29).

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, 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 which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2.

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 criterion 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 emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guidelines C and B:

(Guideline C - Foreign Preference)

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant's application and use of an Iranian passport, while a United States citizen, and his unwillingness to renounce his Iranian citizenship, which does allow him the option of renewing his passport, must be considered adversely to Applicant and it raises serious Foreign Preference (Guideline C) concerns.

Disqualifying Condition (DC) (E2.A3.1.2.1.) applies because Applicant's use of his Iranian passport after he became a United States citizen is a continuing example of Applicant's exercising dual citizenship. DC (E2.A3.1.2.2.) also applies because of Applicant's use of his Iranian passport. I find that his stated willingness to renounce his Iranian citizenship was not made in good faith and therefore, no Mitigating Condition (MC) applies in this case under Guideline C.

(Guideline B - Foreign Influence)

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Based on the evidence of record, the Government has established a reason to deny Applicant a security clearance because of foreign influence. As Applicant's grandfather, with whom he has a self-described close personal relationship is a citizen and resident of Iran, a country which is undisputedly hostile to the Government of the

United States, Applicant has a very heavy burden of showing that this family members do not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002).

The Iranian citizenship of members of Applicant's immediate family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001). This, Applicant has not been able to do.

The evidence of existence of an immediate family member, who is a citizen and resident of Iran, comes within DC (E2.A2.1.2.1.), 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. While MC (E2.A2.1.3.3.) applies because of the limited contact between Applicant and his grandfather, I do not find it controlling, because the relationship, as described by Applicant, is "close," and therefore, the limited contact does not minimize the importance of that relationship.

After considering all of the evidence of record on the issue of Foreign Influence , I conclude that the evidence supporting the SOR substantially outweighs any mitigating evidence.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1. a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against 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.

Martin H. Mogul

Administrative Judge