

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant failed to mitigate security concerns raised by his parents-in-law and brother-in-law being citizen residents of Iran. Clearance is denied.

CASENO: 04-03182.h1

DATE: 02/15/2005

DATE: February 15, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03182

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant failed to mitigate security concerns raised by his parents-in-law and brother-in-law being citizen residents of Iran. 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 29 July 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 6 December 2004. On 26 January 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 4 February 2005.

FINDINGS OF FACT

Applicant is a 46-year-old structural engineer for a defense contractor. He was born in Iran, but left to go to avoid military conscription and attend high school in Germany in 1975. Ex. 1 at 1-2; Tr. 7, 22. While in Germany, a cousin who was living in the U.S. encouraged Applicant to move there. Applicant moved to the U.S. in 1979, obtained his general equivalency degree, and went to college. He became a U.S. citizen in 1987. Ex. 1 at 1. His friends and coworkers find Applicant to be reliable, trustworthy, and dedicated to his duties. Exs. L-P.

Applicant's father tried to leave Iran in the early 1980s. He was taken off a bus bound for Turkey, placed in prison, and accused of being an officer in the Iranian military under the Shah. The authorities later determined he was not. Tr. 24-26. Applicant sponsored his father into the U.S. Applicant's father is now a permanent U.S. resident, has passed his citizenship test, and expects to be sworn in as a U.S. citizen in March 2005. He has traveled to Iran frequently in the past to visit friends, but is unlikely to do so in the future because he is now legally blind and in poor health. Tr. 24.

Applicant's mother is deceased. Applicant's brother and sister are both naturalized citizen residents of the U.S. Applicant's brother escaped from Iran illegally and is now married to a native born U.S. citizen. Applicant has two half-sisters and one half-brother. Applicant sponsored one of his half-sisters to the U.S. She is now a citizen resident of the U.S. Applicant's other half-siblings are considerably older than he is and he did not know they even existed until he was a teenager. He does not have any contact with them.

Applicant was married to a native born U.S. citizen from 1991-93 and to an Iranian-born woman from 1993-96. In 1996, Applicant decided to go to Iran while recuperating from knee surgery and to seek a new wife. The Iranian government refused to issue him a visa because he was born in Iran. To travel to Iran, he was told, he must get an Iranian passport. Applicant paid the Iranian government \$400-\$500 in October 1996 to acquire an Iranian passport with an expiration date of 30 October 2006. Tr. 8-9.

He met his current wife between November and December 1996 on his first trip back to Iran. He returned to Iran for three weeks from December 1997 to January 1998, for one month from September to October 1999, and three months from December 1999 to February 2000 to get better acquainted with his future wife. While in Iran, he stayed with his future brother-in-law. During one of these trips he was interrogated about his ties to Iran and his knowledge of political and protest groups operating in Iran. Applicant returned his Iranian passport to the Iranian government on 13 January 2005. Exs. G-I.

He married his current wife in November 2000. They have two children who are native born U.S. citizens. Applicant's wife is a surgical resident in a local hospital. She is a permanent U.S. resident and will be eligible for citizenship next year. Her mother, father, and brother are citizen residents of Iran.

Applicant is financially stable. All his assets are in the U.S. and he has no financial interests in Iran. He does not provide financial assistance to any persons in Iran.

Iran is a state sponsor of terrorism and remains an impediment to international efforts to locate and prosecute terrorists. Iran is also seeking to acquire nuclear weapons and other weapons of mass destruction. Ex. 6 at 7.

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 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 possesses an Iranian passport (¶ 1.a) and exercised dual citizenship with Iran (¶ 1.b). When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., the applicant 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 Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant exercised dual citizenship with Iran by acquiring and using a foreign passport after he had become a U.S. citizen. DC E2.A3.1.2.1 and E2.A3.1.2.2. Applicant only sought the passport because he could not visit Iran on his U.S. passport. A security clearance must be denied to applicants using or possessing a foreign passport. Memorandum from the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudicative Guideline* (Aug. 16, 2000). The fact Applicant did so because it was the only way he could visit Iran is not mitigating. *See* ISCR Case No. 02-02052 at 4 (App. Bd. Apr. 8, 2003). Although Applicant surrendered his foreign passport, before finding for him I "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. 02-00318 at 4 (App. Bd. Feb. 25, 2004).

After carefully considering all the evidence, including the reasons he acquired the foreign passport, his surrender of the passport, and his stated intent not to travel to Iran again unless he can do so on his U.S. passport and the Iranian government changes the way it treats its citizens, I find for Applicant on ¶ 1.

Guideline B--Foreign Influence

In the SOR, DOHA alleged Applicant's parents-in-law and brother-in-law (¶ 2.a) and his half-siblings (¶ 2.b) are citizen residents of Iran. A security risk may exist when 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 established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant has foreign associates to whom he is bound by affection or obligation. DC E2.A2.1.2.1. There is a rebuttable presumption that an applicant has ties of affection for, or obligation to, members of his wife's immediate family. ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Applicant's parents-in-law and brother-in-law are citizen residents of Iran. Applicant failed to rebut that presumption.

Applicant established that one of his half-sisters is a U.S. citizen and that he has never had any type of familial contact with his half-siblings who are citizen residents of Iran. Half-siblings are not members of an applicant's immediate family, but are instead persons to whom an applicant may be bound by affection or obligation. After considering all of the evidence, I conclude Applicant does not have close ties of affection or obligation for his half-siblings who are citizen residents of Iran. His relationship with them is too remote to cause a security concern. I find for Applicant on ¶ 2.b.

It is a mitigating condition if the foreign associates are not agents of a foreign government and are not in a position to be exploited by a foreign power in a way that could force the applicant to choose between loyalty to the foreign associate and loyalty to the U.S. MC E2.A2.1.3.1. Applicant's in-laws are not agents of a foreign power. *See* 50 U.S.C. 1801(b). But they are in a position to be exploited by a foreign power. After considering all of the facts in this case, including the type and character of the government of Iran and Applicant's relationship to his foreign associates there, I am convinced they are in a position to be exploited by a foreign power.

There is no evidence Applicant is other than a loyal U.S. citizen. The adverse decision is merely an indication

Applicant's situation does not meet the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. I find against Applicant on ¶ 2.a.

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

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: For 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.

James A. Young

Administrative Judge

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