

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant's application for, renewal of, and use of a foreign passport after becoming a naturalized U.S. citizen demonstrated foreign preference and was not mitigated where Applicant had neither surrendered the passport nor obtained formal approval for its use. Applicant was potentially subject to foreign influence where his mother and six siblings were citizens and residents of Iran. However, his contacts with his aunts, uncles, and cousins did not raise any foreign influence security concerns. Clearance denied.

CASE NO: 04-04451.h1

DATE: 06/16/2006

DATE: June 16, 2006

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 04-04451

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Esquire, Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant's application for, renewal of, and use of a foreign passport after becoming a naturalized U.S. citizen demonstrated foreign preference and was not mitigated where Applicant had neither surrendered the passport nor obtained formal approval for its use. Applicant was potentially subject to foreign influence where his mother and six siblings were citizens and residents of Iran. However, his contacts with his aunts, uncles, and cousins did not raise any foreign influence security concerns. Clearance denied.

### STATEMENT OF THE CASE

Applicant challenges the 24 March 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence and foreign preference.<sup>(1)</sup> He answered the SOR 20 April 2005, and requested a decision without hearing. He did not respond to DOHA's 13 July 2005 File of Relevant Material (FORM). The record closed 30 August 2005, when the response was due. DOHA assigned the case to me 7 October 2005.

### FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except that he denied exercising dual citizenship with Iran (SOR 2.a); accordingly, I incorporate those admissions as findings of fact.

Applicant--a 49-year-old senior systems engineer employed by a defense contractor since May 1996--seeks access to classified information. He previously held a clearance when he was a civilian employee of the Department of the Army from June 1989 to May 1996. He applied for his industrial clearance in April 2003.

Applicant was born in Iran--governed then by the Shah of Iran<sup>(2)</sup>--in January 1951. The Shah was overthrown in 1979, and Iran is now an Islamic republic with a history of hostile relations with the U.S.

Applicant grew up in Iran, but left home when he was twelve because he did not get along with his half-brothers. He eventually joined the Imperial Iranian Navy and received a government-funded scholarship to attend a maritime university in the U.S. in 1977. When the Shah was overthrown, U.S. State Department Policy toward Iran changed, and Applicant was told to return to Iran because he was here on his Iranian military passport. He served briefly in the Navy under the new regime, but was released from any remaining service obligation--largely as a result of his affiliation with the previous regime.

In June 1981, Applicant immigrated to the U.S. He finished his interrupted maritime degree in May 1983. He later completed a master's degree in engineering at a different university in January 1986. He became a naturalized U.S. citizen in January 1989. His wife--who was a legal permanent resident of the U.S. when they married in 1989--became a U.S. citizen in 2001. They have two U.S.-born sons, ages 11 and 8.

In June 1989, Applicant went to work with the U.S. Army as a civilian employee. In April 1991, the Army granted his application for a security clearance, after noting his foreign travel to Romania in 1990 and his "contact by correspondence with immediate family members residing in Iran."<sup>(3)</sup> He appears to have held this clearance until May 1996, when he went to work for his current employer.

In January 1994, Applicant applied for an Iranian passport (valid until January 1997) that he used to travel to Iran in 1995 to visit family. There is no evidence in the record that he disclosed either the trip or getting an Iranian passport to the Army. He reapplied for an Iranian passport in July 1998 (valid until July 2003) and used it to travel to Iran in February 1999, May 1999, and September 2000 to visit his mother and other family, despite having obtained a U.S. passport in November 1998.

When Applicant applied for his clearance in April 2003, he disclosed his dual citizenship, his July 1998 Iranian passport, and his relatives living in Iran. In his January 2004 sworn statement, he described being a dual citizen with Iran from 1989 to the present, but also described a letter he had written to the Iranian government--dated the same date as his sworn statement--stating his intent to renounce his Iranian citizenship:

I became a naturalized U.S. citizen on 27 Jan (sic) 1989. I have been a dual citizen of Iran and the U.S. from 27 Jan (sic) 1989 to the present. I am willing and in the process of relinquishing my Iranian citizenship. I hold two expired passports and am not going to apply for another Iranian passport. I have done some research on relinquishing my Iranian citizenship and have found that it is a request that must be granted by the Iranian Council of Ministers. I have written a notarized letter dated 20 January 2004 that I am sending to the embassy in Washington D.C. This is the first and only step that I have taken to relinquish my citizenship and I have no problem doing so as my loyalty and allegiance are to the U.S.

Applicant's Answer to the SOR asserts that he surrendered his Iranian passport to the Iranian government<sup>(4)</sup> in January 2004, but has provided no corroboration of that claim. Neither the January 2004 sworn statement nor the January 2004 letter to the Iranian government claim that passports were included in the letter to the Iranian government. Both claim that Applicant currently holds expired Iranian passports. He has not obtained U.S. Government approval for continued possession and/or use.

Applicant's mother is a legal permanent resident of the U.S., but for several years now has been too ill to travel to the U.S. She resides in Iran, where she is a citizen, with Applicant's brother and other siblings. Applicant's two brothers own a construction company and all his immediate family members live in a building built by that company. Applicant speaks to his brother caring for his mother once or twice a month. He speaks to his other brother about once a year. He only speaks to his sisters if they are with his brother when he calls to check on his mother. Applicant has no contacts with his two step brothers, and virtually no contact with his aunts, uncles, and cousins. Applicant's wife has siblings who are citizens and residents of Iran. He has little contact with them.

Iran is a fundamentalist Islamic republic with a poor human rights record and confrontational relations with the U.S. Relations are unlikely to improve given Iran's efforts to acquire nuclear weapons, its sponsorship of, support for, and involvement in, international terrorism, and its support for violent opposition to the Middle East peace process. The Department of State's December 2005 Travel Warning continues to warn U.S. citizens to carefully consider the risks of travel to Iran, noting that tensions generated by the current situation in Iraq have increased the potential threat to U.S. citizens and interests abroad, including in Iran, posed by those who oppose U.S. policy. Some elements of the Iranian government and population remain hostile to the U.S. American citizens may be subject to harassment or kidnaping. Some areas of the country, including the Baluchistan border area near Pakistan and Afghanistan, the Kurdish northwest of the country, and areas near the Iraqi border, are not considered safe.

Large-scale demonstrations have taken place in various regions throughout Iran over the past several years as a result of a sometimes volatile political climate. U.S. citizens who travel to Iran despite this Travel Warning are urged to exercise caution.

The U.S. government does not currently have diplomatic or consular relations with the Islamic Republic of Iran and therefore cannot provide protection or routine consular services to American citizens in Iran. The Swiss government, acting through its Embassy in Tehran, serves as protecting power for U.S. interests in Iran. Neither U.S. passports nor visas to the United States are issued in Tehran. The Iranian Government does not recognize dual citizenship and generally does not permit the Swiss to provide protective services for U.S. citizens who are also Iranian nationals. In addition, U.S. citizens of Iranian origin who are considered by Iran to be Iranian citizens have been detained and harassed by Iranian authorities. Former Muslims who have converted to other religions, as well as persons who encourage Muslims to convert, are subject to arrest and prosecution.

The character references from Applicant's company and the government agency they support are exemplary, and recommend him for his clearance.

## **POLICIES AND BURDEN OF PROOF**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline B (Foreign Influence) and Guideline C (Foreign Preference) .

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. [\(S\)](#)

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C<sup>3</sup>I) issued a memorandum<sup>(6)</sup> to clarify the application of Guideline C, Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, C<sup>3</sup>I memorandum **"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 States Government."** (Emphasis added).

### CONCLUSIONS

The government established a case for disqualification under Guideline C case by showing that Applicant obtained an Iranian passport in January 1994 and used to travel to Iran in 1995, renewed his Iranian passport in July 1999, and used it to travel to Iran in February 1999, May 1999, and September 2000. This despite becoming a U.S. citizen in January 1989. This conduct implicates disqualifying conditions (DC) 1 and 2,<sup>(7)</sup> and Applicant has not mitigated the security concerns. Although he has been a dual citizen of Iran and the United States since his naturalization in January 1989, his Iranian citizenship would possess little security significance if based solely on his birth in Iran. For his conduct to fall within the security concerns of Guideline C, Foreign Preference, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C. The government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen.

Applicant met only one of the mitigating conditions (MC) for foreign preference. MC 4 applies because Applicant has expressed a willingness to renounce his foreign citizenship. However, none of the other MCs apply. MC 1 does not apply because Applicant's dual citizenship is not based solely on his birth in Iran, but is based on his active exercise of dual citizenship after obtaining U.S. citizenship. MC 2 does not apply because all indicators of possible dual citizenship have occurred since Applicant obtained U.S. citizenship. MC 3 does not apply because Applicant's conduct has not been sanctioned by the U.S.

The ASD, C<sup>3</sup>I Memorandum effectively controls the resolution of the foreign preference issue. The memorandum provides that Applicant's past possession and use of his foreign passport can be mitigated only if Applicant surrenders the foreign passport or obtains U.S. Government approval for its use. Applicant has undertaken neither action. Further, the Appeal Board has ruled that possession of an expired passport does not satisfy the Money Memo requirement for surrender of the passport. *See*, DISCR Case No. 01-24306, September 30, 2003. In addition, Applicant seems likely to renew and use his Iranian passport in the future should his mother's health decline seriously. While Applicant has a legal right to maintain his dual citizenship with its attendant benefits and responsibilities, he has not demonstrated that she can be counted on to always act in preference to the United States. I have considered the fact that Applicant previously held a clearance with the Army, but note that clearance was granted before Applicant had actively exercised his Iranian citizenship by obtaining his Iranian passport and using it to travel to Iran. Further, it does not appear that the Army was aware of these actions. I resolve Guideline C against Applicant.

The government also established a case for disqualification under Guideline B by showing that Applicant's mother and siblings are citizens and residents of Iran.<sup>(8)</sup> His travel to Iran and phone contacts demonstrate close ties of affection. Applicant has not mitigated the security concerns raised by his relatives living in Iran. He has not met his burden of establishing that his relatives are not agents of a foreign government, and are not so situated as to provide a point of

<sup>(9)</sup>

<sup>(10)</sup>

influence on him. I resolve Guideline B against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: For Applicant

Paragraph 2. Guideline C: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: 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. Clearance denied.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Mohammad Reza Pahlavi became Shah in 1941, fled the country briefly in the early 1950s, but returned to power in 1953. In 1961, Iran initiated a series of economic, social, and administrative reforms--fueled by its vast petroleum reserves--that accelerated modernization and the economy at an unprecedented rate. In 1978, religious and political opposition to the Shah (and his hated internal security and intelligence service) increased the level of domestic turmoil in Iran. In January 1979, the Shah fled, and in February 1979 revolution swept the country. The December 1979 constitution created a theocratic republic guided by Islamic principles. In November 1979, revolutionary "students" invaded the U.S. Embassy and took personnel there hostage, not releasing them until 1981. The U.S. severed diplomatic relations with Iran in April 1980.
3. The Army determination was apparently based, in part, on Applicant's February 1991 sworn statement (Item 6) in which he detailed his many relatives residing in Iran, but established that he had no bonds of affection to his aunts, uncles, cousins, and had had no contact with immediate family members other than his mother, until 1990.
4. Via the Iranian Interest Section of the Embassy of Pakistan.
5. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. The so-called "Money Memo" because it was signed by Arthur L. Money.
7. E2.A3.1.2.1. The exercise of dual citizenship; E2.A3.1.2.2. Possession and/or use of a foreign passport;
8. 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;
9. E2.A2.1.3.1. 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 or 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 (s) involved and the United States.
10. However, I find subparagraphs 1.c. and 1.d. for Applicant because he has neither bonds of affection nor meaningful contact with his two half-brothers and his aunts, uncles, and cousins who live in Iran. In addition, his aunts, uncles, and cousins are not his immediate family, and thus raise no security concerns under Guideline B. I find subparagraph 1.e. for Applicant because his travel to Iran only establishes his close ties of affection to his immediate family there. His travel to Iran has no independent security significance under Guideline B.