KEYWORD: Foreign Influence; Foreign Preference
DIGEST: Applicant was born in Iran and became a United States citizen in 1990. His family in the United States consists of one daughter. Applicant's mother, sister and brother are citizens and residents of Iran. Applicant's strong attachment to his family in Iran, primarily his mother, creates a significant threat that he would respond unfavorably if pressure was placed on him to act against United States interests. Mitigation has not been shown. Clearance is denied.
CASENO: 04-05932.h1
DATE: 07/26/2005
DATE: July 26, 2005
In Re:
SSN:
Applicant for Security Clearance
ISCR Case No. 04-05932
DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL
<u>APPEARANCES</u>
FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Phillip Carter, Esq.

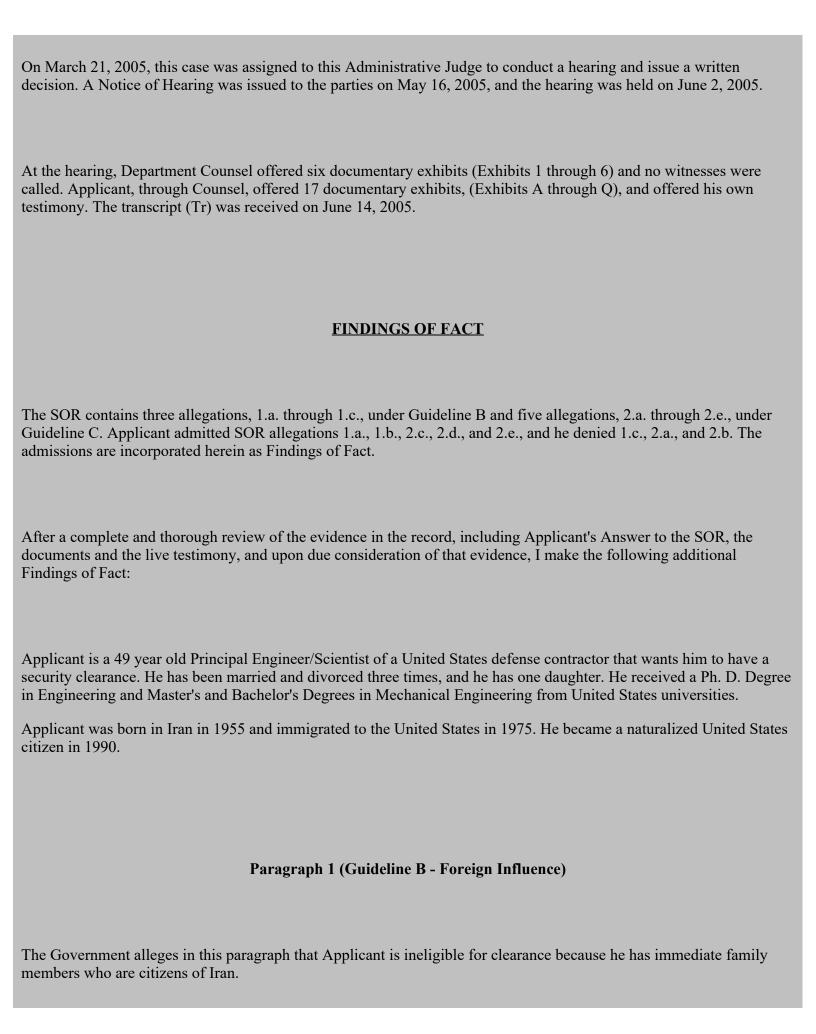
SYNOPSIS

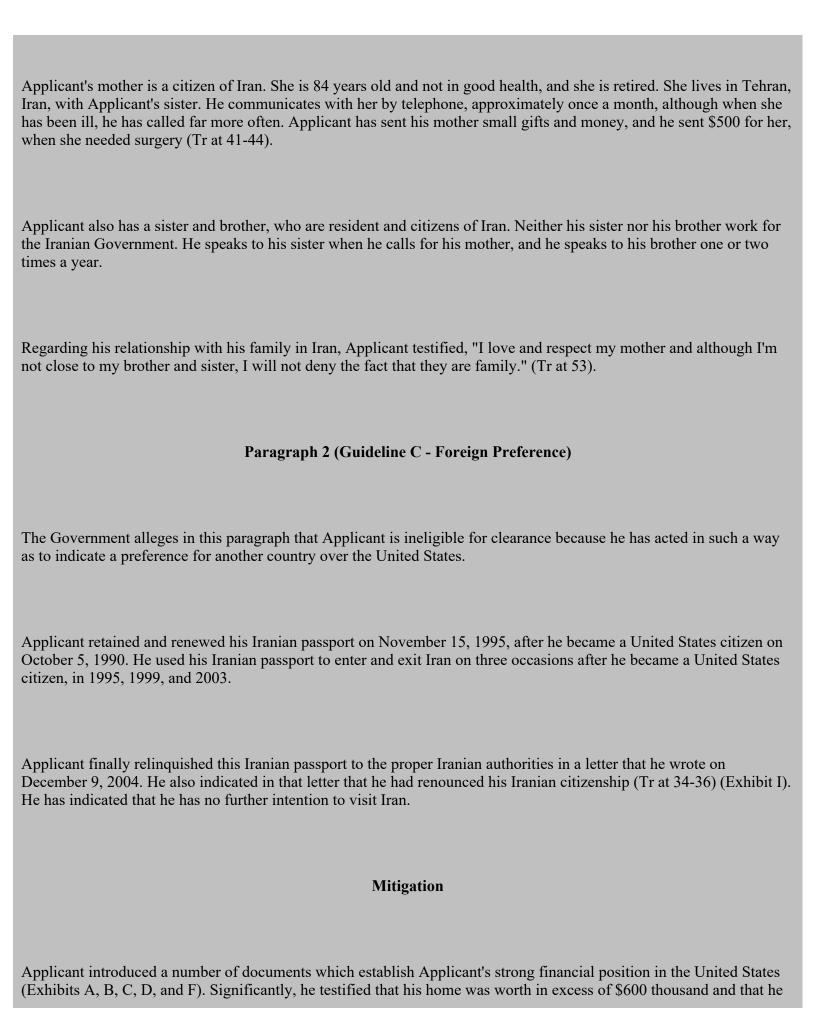
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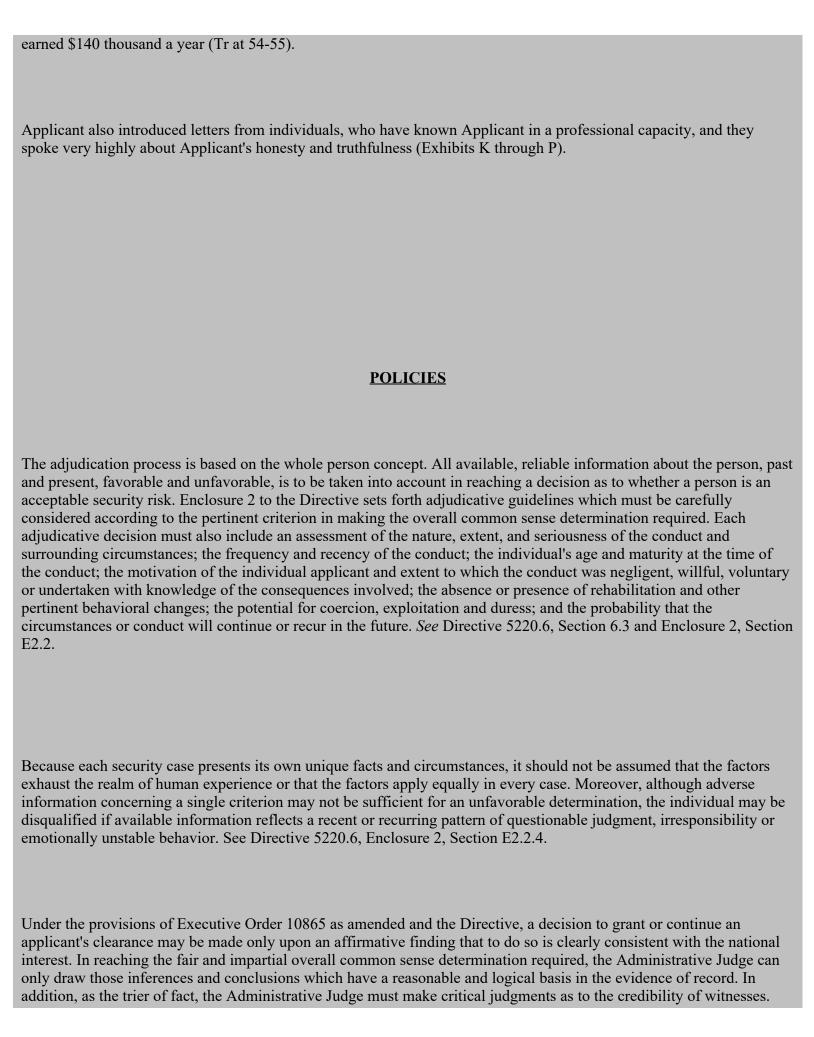
STATEMENT OF THE CASE

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 January 31, 2005, 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 Influence (Guideline B) concerns, because of the foreign residency and citizenship of close family members in Iran and on Foreign Preference (Guideline C) concerns, related to his exercise of dual citizenship with the United States and Iran.

Applicant filed a notarized response dated February 12, 2005, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.







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 Applicant, I conclude the following with respect to Guidelines B and 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.

Disqualifying Condition (DC) E2.A2.1.2.1. must be considered adversely in assessing Applicant's current suitability for access to classified information, when 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, The existence of Applicant's mother, sister, and brother, who are citizens and residents of Iran comes within DC E2.A2.1.2.1.

The evidence has established that Applicant continues to have strong feelings toward his family, especially his mother, in Iran, a country whose interests are extremely inimical to that of the United States. Applicant's strong attachment to his family in Iran creates a significant threat that he would respond unfavorably if pressure was placed on him to act against United States interests. Therefore, I cannot find that Mitigating Condition (MC) E2.A2.1.3.1., a determination that the immediate family members 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 loyalty to the persons involved and the United States, applies. Guideline B is found against Applicant.

(Guideline C - Foreign Preference)

Guideline C is based on actions taken by an individual that indicates a preference for a foreign country over the United States. Applicant's continued use of his Iranian passport after he became a United States citizen raises serious Foreign Preference (Guideline C) concerns.

At the time the SOR was issued, Disqualifying Conditions (DC) E2.A3.1.2.1., the exercise of dual citizenship, applied because of Applicant's use of his Iranian passport during three separate trips that he took after he became a United States citizen. DC E2.A3.1.2.2. also applied because of Applicant's continued use and his failure to return his Iranian passport to the proper authorities, until December 9, 2004.

However, Applicant has now surrendered his passport to the proper authorities. I conclude that neither DC E2.A3.1.2.1. nor E2.A3.1.2.2. currently apply. Also since he has renounced his Iranian citizenship, MC E2.A3.1.3 .4. is applicable to this case. I resolve Guideline C for Applicant.

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 B: AGAINST APPLICANT

Subparagraph 1. a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For 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