

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant, a 55-year-old employee of a defense contractor working as a senior software engineer, is a dual citizen of Iran and the U.S. holding passports from both countries. Under a student visa in 1968, he studied physics and nuclear engineering in the U.S. In 1978, he returned to Iran hoping to contract with the government for his services on computer software. When that effort failed, he returned to the U.S. in 1993. He declines to surrender his Iranian passport which he renewed in 2002 after obtaining U.S. citizenship in 1998. Clearance is denied.

CASENO: 04-06515.h1

DATE: 12/31/2005

DATE: December 31, 2005

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 04-06515

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a 55-year-old employee of a defense contractor working as a senior software engineer, is a dual citizen of Iran and the U.S. holding passports from both countries. Under a student visa in 1968, he studied physics and nuclear engineering in the U.S. In 1978, he returned to Iran hoping to contract with the government for his services on computer software. When that effort failed, he returned to the U.S. in 1993. He declines to surrender his Iranian passport which he renewed in 2002 after obtaining U.S. citizenship in 1998. Clearance is denied.

**STATEMENT OF THE CASE**

On April 11, 2005, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated May 10, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on September 27, 2005. A complete copy of the file of relevant material (FORM), consisting of 12 documents, was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. The case was assigned to, and received by, me on November 26, 2005.

## **PROCEDURAL MATTERS**

The Government moved in the FORM, to amend the SOR to add three new allegations under Guideline B. No information in response to the motion was received from Applicant. The motion dealt with the citizenship of Applicant's children (2.b.), and his siblings (2.c. and d.). The amendments conform with the evidence supplied by Applicant in his investigative statement (Item 6). The motion to amend is granted.

## **FINDINGS OF FACT**

Applicant is a 55-year-old employee of a defense contractor working as a senior software engineer. He admitted the factual allegations pertaining to foreign influence under Guideline B and foreign preference under Guideline C in the initial SOR and offered certain explanatory information. The admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant came to the U.S. in 1968 from Iran on a student visa. He married a U.S. born citizen in 1975. He was educated in several U.S. universities with degrees in physics and nuclear engineering. He returned to Iran in 1978 or 1979 because he could not find work in the U.S. While in Iran he voted in several elections both local and national. He attempted to organize a business to

develop computer software and contract with the Iranian government. When this effort failed he returned to the U.S. in 1993 and his family came in 1994. He became a citizen in 1998. Since returning to the U.S., he studied computer science and was employed by several private communications companies before taking his present position in February, 2002. The government of the Islamic Republic of Iran is avowedly hostile to the government of the U.S.

The government has established that Applicant is a dual citizen of both Iran and the U.S., his mother is not a United States citizen and resides half of the year in Iran and the other half in the U.S. with her children. Applicant's two children, three brothers and one sister are dual citizens of the U.S. and Iran. Another sister is a citizen of Iran currently residing in the U.S. as a resident alien. His son, who is 28-years-old, has traveled to Iran several times since their return to the U.S. He is not subject to military service in Iran since his mother is a native-born U.S. citizen.

Applicant holds a passport from Iran that he used both before and after becoming a U.S. citizen for travel to Iran. He renewed it in 2000 after becoming a U.S. citizen. He declines to surrender the passport as a prerequisite to obtaining a security clearance as required by the Memorandum of the Assistant Secretary of Defense (C3I) "Money Memorandum" dated August 16, 2000. Applicant asserts he needs the passport in case his elderly mother should become seriously ill while in Iran and he desires to visit her.

## 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive. (E2.2.1) Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive (E2.2.2.) "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

## CONCLUSIONS

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny him a security clearance because of foreign preference and foreign influence. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at 33-34 (App. Bd. Feb. 8, 2001).

Under Guideline C, foreign preference, an individual who acts in such a way as to indicate a preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States. Conditions that could raise a security concern and may be disqualifying include the exercise of dual citizenship (E2.A3.1.2.1.), the possession and/or use of a foreign passport (E2.A3.1.2.2.), and voting in foreign elections. (E2.A3.1.2.8.) Security concerns may be mitigated by a willingness to renounce dual citizenship (E2.A3.1.3.4.), and return or invalidation of a foreign passport pursuant to the Money Memorandum. Applicant has declined to take those steps on both issues to mitigate the security concerns by surrendering the passport and renouncing his Iranian citizenship. While his refusal may be for valid family reasons, it is not in compliance with the requirements of the government.

Under Guideline B, foreign influence, "A security risk may exist when an individual's immediate family and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information." (E2.A2.1.1.) Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. (E2.A2.1.2.1.)

Under Guideline B, security concerns may be mitigated by a determination "that the immediate family members 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 person(s) involved and the United States." (E2.A2.1.3.1) By definition, Applicant has close ties with his mother who lives with him when she is in the U.S. Thus, she is someone who might be subject to the kinds of pressure the regulation contemplates. His other family members illustrate an extensive family of dual citizens with ties to Iran creating potential security issues for Applicant.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude Applicant's record of conduct justifies a finding that it is not clearly consistent with the national interest to grant him a security clearance.

## **FORMAL FINDINGS**

Formal Findings as required by the Directive, (E3.1.25), are as follows:

Paragraph 1. Guideline C AGAINST APPLICANT

Subparagraph 1.a.: 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**

After full consideration of all the facts and documents 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.

Charles D. Ablard  
Administrative Judge