

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a 62-year-old naturalized United States citizen who was born in Iran. He has resided permanently in the United States since 1984. His wife is a citizen of Iran, living in the United States. Other family members are citizens and residents of Iran. In 2003, Applicant traveled to Iran on an Iranian passport to attend his son's wedding to an Iranian woman. Applicant failed to mitigate the foreign preference and foreign influence security concerns raised by the possession of an Iranian passport and presence of family members in Iran. Clearance is denied.

CASENO: 04-06543

DATE: 01/17/2006

DATE: January 17, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-06543

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer Campbell, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is a 62-year-old naturalized United States citizen who was born in Iran. He has resided permanently in the United States since 1984. His wife is a citizen of Iran, living in the United States. Other family members are citizens and residents of Iran. In 2003, Applicant traveled to Iran on an Iranian passport to attend his son's wedding to an Iranian woman. Applicant failed to mitigate the foreign preference and foreign influence security concerns raised by the possession of an Iranian passport and presence of family members in Iran. Clearance is denied.

### STATEMENT OF THE CASE

On June 3, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR, which is essentially an administrative complaint, detailed reasons under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On June 20, 2005, Applicant filed his answer and elected to have the case decided on the written record in lieu of a hearing. <sup>(1)</sup> On August 13, 2005, Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on September 26, 2005. <sup>(2)</sup> Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on September 19, 2005, and chose not to submit additional information. The case was assigned to me on November 28, 2005.

## FINDINGS OF FACT

In his Answer to the SOR, Applicant admitted the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 1.a.-1.d.) and foreign influence under Guideline B (subparagraphs 2.a.-2.g.). These admissions are incorporated into my findings of fact. After a complete review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 62-year-old married man who was born and raised in Iran. He came to the United States on a student visa and earned his Ph.D. in mechanical engineering in 1969.<sup>(3)</sup> He then returned to Iran where he became a professor at an Iranian university. He lived and taught there until 1984, when he returned to the United States. He became a naturalized citizen in 2001.<sup>(4)</sup> Since 1985, he has been on the faculty of a state university.<sup>(5)</sup> In August 2002, he completed a Security Clearance Application ("SCA").

In 1972, Applicant married his wife, who is a native-born citizen of Iran and a permanent resident of the United States.<sup>(6)</sup> His wife is the owner of record of their home in Iran.<sup>(7)</sup> She maintains her Iranian citizenship in order to freely visit her elderly mother who is a resident and citizen of Iran.<sup>(8)</sup>

They have two sons. One was born in Iran and the other was born in the United States.<sup>(9)</sup> The son born in Iran recently became a naturalized citizen and resides in the United States.<sup>(10)</sup> In 2003, the son married an Iranian woman in Iran, who remains a citizen and resident of Iran, while awaiting a visa to travel to the United States to join Applicant's son.<sup>(11)</sup>

Applicant is one of four children born to Iranian parents. Two of his sisters were born in the United Kingdom and live there. The other one was born in Iran and is a citizen and resident of that country.<sup>(12)</sup> She lives in his home there.<sup>(13)</sup> His mother lives in the United Kingdom and his father is deceased.<sup>(14)</sup>

In addition to his mother-in-law and brother-in-law, who are citizens and residents of Iran, Applicant also has aunts, uncles and numerous friends who are citizens and residents. Many of them attended his son's wedding in 2003.<sup>(15)</sup> He communicates with some of his relatives and friends at the Iranian New Year and reviews scientific papers for colleagues on a yearly basis.<sup>(16)</sup> None of his relatives living in Iran are agents for the government.<sup>(17)</sup>

In 1999, Applicant was issued an Iranian passport that expired in July 2004. He used it in August 2003 to attend his son's wedding because it is the only way he can enter the country. He stated, "I admit that I have an Iranian passport but this is the only way I can travel to Iran to visit my relatives and it is only used for that purpose . . . Because of circumstances beyond my control, I am required to have a passport to travel to the country where I was born." Other than this visit, he has not returned to Iran since leaving in 1984.<sup>(18)</sup> He considers himself to be a citizen of the United States.<sup>(19)</sup>

Since the 1979 revolution, Iran and the United States have been adversaries. Impediments to improved relations with Iran include Iranian efforts to acquire nuclear weapons and other weapons of mass destruction; its support for and involvement in international terrorism; its endorsement of violent opposition to the Middle East peace process; and its dismal human rights record. [\(20\)](#)

On August 16, 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence issued a passport policy pertaining to Adjudicative Guideline C-Foreign Preference ("ASD/C<sup>3</sup>I"). The memorandum states in part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raise doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. **Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains approval of its uses from the United States Government.** Modification of the Guideline is not required. (Emphasis added) [\(21\)](#)

Although Applicant received notice of the above memorandum in September 2005, he did not submit any evidence indicating that he had either received official approval to use the passport or surrendered it to the Iranian Embassy.

## **POLICIES**

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.<sup>(22)</sup> The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty.<sup>(23)</sup> Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information.<sup>(24)</sup> The Directive presumes a rational connection between past proven conduct under any disqualifying conditions and an applicant's present security suitability.<sup>(25)</sup>

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government.<sup>(26)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance."<sup>(27)</sup>

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

**Guideline C - Foreign Preference:** A security concern may exist when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Guideline B - Foreign Influence: A security concern may exist when an individual's immediate family, including cohabitants, 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. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Guideline C and Guideline B's disqualifying and mitigating conditions, raising either security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

## CONCLUSIONS

Upon consideration of all the facts in evidence and the application of the appropriate adjudicative factors and legal standards, including the "whole person" concept, I conclude the following with respect to the allegations set forth in the SOR:

### Guideline C: Foreign Preference

The government established its case under Guideline C. Although Applicant was a naturalized citizen in 2003, he admitted that for purposes of convenience he used his Iranian passport to visit and attend his son's wedding in Iran. In doing so, he exercised dual citizenship, which constitutes a disqualifying condition under Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1. (*The exercise of dual citizenship*).<sup>(28)</sup> Furthermore, the mere possession of a foreign passport without use is an exercise of dual citizenship and is disqualifying under FP DC E2.A3.1.2.2. (*Possession and/or use of a foreign passport*).<sup>(29)</sup> To-date, Applicant continues to possess his passport and it appears from his Answer that he does not intend to surrender it because he may find it necessary to use it to return to Iran in the future.

The ASD/C<sup>3</sup>I Memo requires a clearance be denied or revoked unless an applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government. As Applicant did not present evidence of either, none of the mitigating conditions apply. Accordingly, allegations 1.a.-1.d. of the SOR under Guideline C are concluded against Applicant.

## Guideline B: Foreign Influence

The government also established its case under Guideline B. Applicant's wife maintains her Iranian citizenship and his sister is a citizen and resident of Iran. In addition, his daughter-in-law, mother-in-law and brother-in-law are citizens and residents of Iran, all of whom bring this case within the disqualifying condition FI 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*).<sup>(30)</sup> While the mere possession of such family ties is not automatically disqualifying, it raises security concerns sufficient to require an applicant to rebut, extenuate or mitigate the concern and establish that it is clearly consistent with the national interest to grant him a clearance.<sup>(31)</sup>

I considered all the mitigating conditions under Guideline B, in particular, Foreign Influence Mitigating Condition (FI MC) 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 in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*), and conclude it does not apply. Although there is no evidence to establish that any of Applicant's family members are agents of a foreign power, the question remains whether the relatives are in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his family and the United States. A factor to consider in resolving that question is an analysis of the character of the foreign power and entities within the country. In this case the hostility of Iran to the United States places a heavy burden on Applicant to demonstrate that his family members do not create security risks. With its long-standing adversarial stance and dismal human rights record, it is conceivable that Iran would target any citizen in an attempt to gather information from the United States. Those circumstances place his relatives in a situation that could create a potential source of exploitation for Applicant in the event the government discovered that he had access to classified information.

I have also considered FI MC E2.A2.1.3.2. (*Contact and correspondence with foreign citizens are casual and infrequent*) and conclude it does not apply. Applicant maintains contact with his family on a yearly basis. His wife travels there to take care of her ailing mother and his sister lives in his house. Given the consistent communication and nature of contact he has with his family in Iran, these interactions cannot be construed to be casual or infrequent, but rather indicative of an ongoing relationship to his homeland. Unfortunately, the fact that he maintains a connection to these people, places him in a position of vulnerability, such that the government's case is not mitigated under this condition.

The evidence established Applicant is a loyal United States citizen who loves this country and his family. Having resided in the United States for 31 years, he has numerous ties here, including a record of academic achievement and work. In 2001, he pledged allegiance to the United States. But the pertinent mitigating condition in this case "hinges not on what choice Applicant might make if he is forced to choose between his loyalty and his family and the United States, but rather hinges on the concept that applicant should not be placed in a position where he is forced to make such a choice."<sup>(32)</sup> Because his sister and other family members for whom he has affection are citizens and residents of Iran, Applicant was unable to establish they are not in a vulnerable position. Accordingly, allegations 2.a.-2.g. of the SOR under Guideline B are concluded against Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

#### **Paragraph 1: Guideline C (Foreign Preference) AGAINST THE APPLICANT**

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

#### **Paragraph 2: Guideline B (Foreign Influence) AGAINST THE APPLICANT**

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: Against the Applicant

Subparagraph 2.g.: Against the Applicant



## DECISION

In light of all the circumstances and evidence presented in this case, Applicant did not mitigate the security concerns raised by his family members who are citizens and residents in Iran. Clearance is denied.

Shari Dam

Administrative Judge

1. Item 3 (Answer to SOR, dated June 20, 2005).
2. The Government submitted 12 exhibits in support of its case.
3. Item 4 (Security Clearance Application, dated August 8, 2002).
4. *Id.* at 3.
5. *Id.* at 2.
6. Item 3, *supra* note 1, at 2.
7. *Id.*
8. Item 6 (Statement of Applicant, dated July 9, 2004) at 2.
9. Item 4, *supra* note 3, at 2.
10. Item 3, *supra* note 1, at 2.
11. Item 6, *supra* note 8, at 3.
12. Item 4, *supra* note 3, at 3-4.
13. Item 3, *supra* note 1, at 2.
14. Item 4, *supra* note 3, at 3.
15. *Id.* at 3-4; Item 5 (Guest List for son's wedding in 2003).
16. Item 3, *supra* note 1, at 3.

17. Item 6, *supra* note 8, at 4.
18. Item 3, *supra* note 1, at 2.
19. *Id.*, at 1.
20. Item 12 (U.S. Department of State Consular Information Sheet, dated August 15, 2005).
21. Item 10 (Memo. from Arthur L. Money, Assistant Secretary for Command, Control, Communication, and Intelligence, to Directors of Defense Agencies, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline*, dated August 16, 2000).
22. Directive, Enclosure 2, ¶ E2.2.2.
23. Executive Order 10865, § 7.
24. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
25. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).
26. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15.
27. *Id.*
28. ISCR Case No. 02-02052 at 4 (App. Bd. Apr. 8, 2003).
29. ISCR Case No. 01-02270 at 3 (App. Bd. Aug. 29, 2003).
30. There is a rebuttable presumption that a person has close ties of affection for, or obligation to, the immediate family members of the person's spouse. ISCR Case No.01-02452 (App. Bd. Nov. 21, 2002).
31. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at 33-34 (App. Bd. Feb. 8, 2001).
32. ISCR Case No. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005).