

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: The Applicant has been a dual citizen of Iran and the United States since 1985. He has a current Iranian passport and intends to retain the passport and his citizenship due to family matters. He has traveled to Iran on his Iranian passport since obtaining his American passport and has extensive family ties there. Adverse inference is not overcome. Clearance is denied.

CASENO: 04-06996.h1

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. 04-06996

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has been a dual citizen of Iran and the United States since 1985. He has a current Iranian passport and intends to retain the passport and his citizenship due to family matters. He has traveled to Iran on his Iranian passport since obtaining his American passport and has extensive family ties there. Adverse inference is not overcome. Clearance is denied.

**STATEMENT OF THE CASE**

On April 12, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on May 9, 2005, and requested a hearing. The case was received by the undersigned on July 19, 2005, and a Notice of Hearing was issued on August 2, 2005.

A hearing was held on August 23, 2005, at which the Government presented seven documentary exhibits. Testimony was taken from the Applicant, who also submitted two exhibits. The transcript was received on September 6, 2005.

### **FINDINGS OF FACT**

The Applicant is 46, married and has a Bachelor of Science degree. He is employed by a defense contractor as an Engineer, and he seeks to obtain DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant was born in Iran in 1959. He moved to the United States in 1978 to continue his education and has lived continually in the United States since that time. (Government Exhibit 3 at 1.) The Applicant became a naturalized American citizen on August 26, 1985. The Applicant obtained a United States passport on December 17, 1997. (Government Exhibit 1 at question 3.) He is a dual citizen of the United States and Iran because of his birth in Iran. The Applicant also has a valid Iranian passport, which he last renewed in 1996 and valid through April 2006. (Government Exhibit 1 at question 15.)

The Applicant has traveled to Iran since becoming an American citizen using his Iranian passport in 1996, 1999 and 2000. When he first traveled to Iran after becoming an American citizen, he had to pay the Iranian government a sum of approximately \$6,000 in lieu of serving in the Iranian military. (Transcript at 25-26.) The last time he traveled to Iran was in 2004. (Transcript at 23-24.) The Applicant stated that it would be difficult for him to travel to Iran only on his American passport. The Applicant's statement was supported by the exhibits. Government Exhibit 5 is a U.S. Department of State Consular Information Sheet for Iran dated July 3, 2005. It states at page 3, "U.S. citizens who were born in Iran, who have become naturalized citizens of Iran, or who were at one time citizens of Iran, and children of such persons, are considered Iranian nationals by Iranian authorities. Therefore, despite the fact that these individuals possess U.S. citizenship, they must enter and exit Iran bearing an Iranian passport."

The Applicant's parents live the majority of the time in Iran. His father is a naturalized American citizen. The Applicant's mother is a permanent legal resident of the United States. The Applicant is unwilling to give up the ability to

travel freely to Iran to visit his family. He testified, "And the only reason I renew that is because I have elderly parents. My father right now is 80 years old and my mom is 60 years old and in poor health. And morally I am obligated to visit them, see if I can take care of them; or, once they pass away, to attend their funeral." (Transcript at 17-18.)

The Applicant received a copy of the Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence dated August 16, 2000, with the subject, "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline." ("Money Memorandum.") (Government Exhibit 7.) He was given an opportunity to review the Money Memorandum and discussed it on the record. He stated that he understood the requirements of the Money Memorandum to relinquish his Iranian passport, but was unwilling to do so. In addition, the Applicant is not currently prepared to revoke his Iranian citizenship. (Transcript at 19-23.) In my opinion, the Applicant fully understood the possible impact of his decision.

Guideline B - (Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

As stated above, the Applicant's parents reside for the majority of the year in Iran. In addition, one of the Applicant's siblings, a sister, also lives in Iran and is an Iranian citizen. The Applicant is, by his own admission, close to his family.

The Applicant's father-in-law is a naturalized American citizen, and resides primarily in the United States. His mother-in-law and sister-in-law, however, are citizens of Iran and reside there. The Applicant's wife is in regular contact with her family in Iran. She is also a dual citizen of Iran and the United States, and has an Iranian passport in addition to her passport from the United States.

#### Mitigation.

Applicant's Exhibits A and B show that the Applicant is a successful and respected professional at his workplace.

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct

h. The potential for pressure, coercion, exploitation or duress

i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections or be subject to foreign influence. These are situations that may demonstrate poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of showing that the Applicant is a dual citizen of Iran and the United States, that he retained and used an Iranian passport after becoming an American citizen in preference to his US passport, and that he has extensive foreign connections. The Applicant, on the other hand, has not mitigated any of the allegations against him, except in part. SOR subparagraph 2.d. is found for the Applicant as his father-in-law has become an American citizen.

The Applicant has a family situation that, in his opinion, keeps him from either revoking his Iranian citizenship or returning his Iranian passport. His decision to retain the passport and citizenship is not made lightly. However, the Money Memorandum requirements do not allow a distinction to be made because of potential family emergencies. In addition, he has traveled to Iran on his Iranian passport since becoming an American citizen. The last time he traveled on the Iranian passport was in 2004. Finally, he acted as a dual citizen by paying a bounty so as not to serve in the Iranian military. Disqualifying Conditions E2.A3.1.2.1. *The exercise of dual citizenship*; and E2.A3.1.2.2. *Possession and/or use of a foreign passport*, apply. None of the Mitigating Conditions apply. Guideline C is found against the Applicant.

Turning to Guideline B, the Applicant has not mitigated this allegation. He has close and continuing relationships with his family members in Iran. While it appears that they are not agents of the Iranian government, given the overall stance of the Iranian government towards Iranian-Americans, it is still a concern. Disqualifying Condition E2.A2.1.2.1. applies, *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*. None of the Mitigating Conditions apply due to the particular facts of this case. Guideline B is found against the Applicant.

The Applicant has made what he believes to be the best decision for him and his family by retaining his Iranian citizenship and passport. That may well be true. However, the current security rules do not allow him to have a security clearance. On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: 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.

Subparagraph 1.e.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: Against the Applicant.

Subparagraph 2.c.: Against the Applicant.

Subparagraph 2.d.: For the Applicant.

Subparagraph 2.e.: Against the Applicant.

Subparagraph 2.f.: Against the 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 the Applicant.

Wilford H. Ross

Administrative Judge