

DATE: May 5, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-08107

## **DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

This 35-year-old employee of a defense contractor was born in Iran in 1970. He came to the U.S. in 1992. His mother, father, a sister, and a brother, all of whom now reside in the U.S. are dual citizens of the U.S. and Iran. He has two other siblings who live in and are citizens of Iran. From 1989 to 1991, he served in the Iranian military. During that military service, he was incarcerated by Iranian authorities because his immediate family members were living in the U.S. He traveled to Iran in 1999, and although he was a U.S. citizen and had a U.S. passport, he used his Iranian passport to enter Iran. That passport has expired, but can still be used to enter Iran. Applicant still considers himself to be a dual U.S./Iranian citizen. Mitigation has not been established. Clearance is denied.

### **STATEMENT OF THE CASE**

On June 6, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On July 29, 2005, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on October 31, 2005. The FORM instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. In this case, the receipt was due by December 15, 2005. Applicant did not submit a response to the FORM. The matter was assigned to me for resolution on January 6, 2006.

### **FINDINGS OF FACT**

Applicant is a 35-year-old Engineer for a major defense contractor. The SOR contains eight allegations, 1.a. - 1.h., under Guideline B (Foreign Influence), and two allegations, 2.a and 2.b., under Guideline C (Foreign Preference) (Item 1). In his response, Applicant admits all 10 SOR allegations (Item 3). His admissions are accepted and made Findings of Fact.

After considering the totality of the evidence derived from the contents of the FORM, I make the following FINDINGS OF FACT as to each SOR allegation:

*Guideline B (Foreign Influence)*

1.a. - Applicant's parents are citizens of Iran and the United States and reside in the U.S.

1.b. - Applicant has a sister who is a dual citizen of Iran and the U.S.

1.c. - Applicant has a brother who is a dual citizen of Iran and the U.S.

1.d. - Applicant has another sister, who is a citizen of Iran and resides in the U.S.

1.e. - Applicant has another brother, who is a citizen of and resides in Iran.

1.f. - Applicant has a third sister, who is a citizen of and resides in Iran.

1.g. - While serving in the Iranian military from November 1989 to November 1991, Applicant was placed in jail and interrogated by Iranian military intelligence because his parents lived in the U.S.

*Guideline C (Foreign Preference)*

2.a. - Applicant used his Iranian passport in July 1999 to travel to Iran, despite being a naturalized U.S. citizen and possessing a valid U.S. passport.

2.b. - As of his response to the SOR on July 29, 2005 (the most recent evidence), Applicant continued to possess an Iranian passport, which is expired but still usable for travel to Iran, according to Applicant.

Applicant came to the U.S. in 1992, at age 22. He became a U.S. citizen in January 1999, and obtained a U.S. passport, which he has since renewed (Item 5). Most of his immediate family is in the U.S., but he still has close family members in Iran.

**POLICIES**

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing participation; (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 pertinent 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, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns 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 conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

## CONCLUSIONS

### *Guideline B (Foreign Influence)*

The Concern: A security risk may exist when [members of] an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

The DOHA Appeal Board has held that: "an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk ((Appeal Board Decision, ISCR Case No. 01-26893 (October 16, 2002): Based on official U.S. Government documents, the Government contends that Iran must be considered a "hostile" country (Items 6 and 7). Appeal Board guidance also states that: "family ties in [any] foreign country raise a *prima facie* security concern that requires an applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him" (Appeal Board Decision, ISCR Case No. 02-06478 (May 19, 2003)).

Disqualifying Condition - (1) an immediate family member . . . is a citizen of, or resident or present in, a foreign country.

Mitigating Conditions - (1) - a determination that the immediate family members . . . would not constitute an unacceptable security risk - does not apply because all of his immediate family members, whether resident in the U.S. or Iran, have Iranian citizenship.

### *Foreign Preference*

The case is unique on its facts. DoD policy (the Money Memorandum) is that possession of a foreign passport is incompatible with holding a security clearance. Indeed, Guideline C does not provide any mitigating condition to the disqualifying condition of holding a foreign passport except, impliedly, surrendering that passport. The rationale is that the ability to use a foreign passport makes it impossible for the U.S. to track the foreign travel of its citizens including, most particularly, individuals with security clearances. In the present case, Applicant's Iranian passport is expired but Applicant can still use it to enter Iran. In this sense, the foreign passport is still valid, and must be deemed as much an unacceptable risk as a non-expired passport.

Applicant has found himself in an awkward situation. He has not renounced nor expressed an intent to renounce his Iranian citizenship, in part apparently because he thought that could not be done. In fact, there is a procedure under Iranian law that allows it, but the renunciation must be approved by the Iranian government, an approval difficult to obtain. In such cases, we look to see if an applicant has made an effort to renounce by sending a formal letter to the Iranian interest section of the Embassy of another country acting on Iran's behalf in the U.S.

I can only consider evidence in the record in making my decision. Based on that evidence, I am compelled to conclude that Applicant still considers himself to be a citizen of Iran and he possesses a passport which although expired, is in fact still usable in gaining entrance to Iran, and which can impliedly be renewed at will.

*Disqualifying Conditions*

1. The exercise of dual citizenship; and
2. Possession and/or use of a foreign passport.

*Mitigating Conditions*

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

On this basis, I conclude that Applicant has not done anything to mitigate the Government's concerns. I therefore find against him as to Guideline C.

The government must always establish a case with evidence that supports SOR allegations under specific guidelines. It is axiomatic in the security clearance process, however, that the ultimate burden of proof is always on the applicant to demonstrate that he or she is eligible to hold a security clearance and not on the government to prove otherwise. In this case, I have given special emphasis to the fact that the other country is Iran, which at the far other end of the risk spectrum from countries such as Canada or Great Britain. Iranian hostility to the United States is too well known to be ignored, and it is that hostility that raises the bar for granting or continuing a security clearance. Applicant has simply not met his heavy burden of proving mitigation or extenuation.

**FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) 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

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Guideline C (Foreign Preference) Against the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. 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 Applicant.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**