

KEYWORD: Foreign Preference

DIGEST: The Applicant is a dual citizen of Iran and the United States. She states that she sent her Iranian passport to the Iranian Embassy in Mexico City, exico. The letter is not certified or witnessed by her security officer. The letter and certificate of mailing by themselves do not prove that what the Applicant sent to the Iranian Embassy was her Iranian passport. She has failed to comply with the provisions of the Money Memorandum, and does not fall within the Government's exception. She has significant family ties in Iran that could raise a security concern. Clearance is denied.

CASENO: 04-09364.h1

DATE: 01/17/2006

DATE: January 17, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09364

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a dual citizen of Iran and the United States. She states that she sent her Iranian passport to the Iranian Embassy in Mexico City, Mexico. The letter is not certified or witnessed by her security officer. The letter and certificate of mailing by itself does not prove that what the Applicant sent to the Iranian Embassy in Mexico was her passport. She has failed to comply with the provisions of the Money Memorandum, and does not fall within the exceptions. She has significant family ties in Iran that raise a security concern. Clearance is denied.

STATEMENT OF THE CASE

On July 21, 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 the 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 on September 7, 2005, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 30, 2005. A notice of hearing was issued on October 13, 2005, scheduling the hearing for November 9, 2005. At the hearing the Government presented five exhibits. The Applicant presented three exhibits and called one witness. She also testified on her own behalf. The record was left open to allow the Applicant an opportunity to submit additional evidence. The Applicant submitted one Post-Hearing Exhibit. The official transcript (Tr.) was received on November 23, 2005.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum with the SOR.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 49 years of age and has a master's Degree in Electrical Engineering. She is employed as a Hardware Electrical Design Engineer for a defense contractor. She seeks a security clearance in connection with her employment in the defense industry.

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

The Applicant is a dual citizen of Iran and the United States. She was born in Iran in 1956 to Iranian parents. She moved to the United States in 1978 to pursue her college education. She has lived in the United States since then. She married an Iranian and had two children who were born in the United States. She obtained a good job, has accumulated substantial financial investments in the United States and has proceeded to make the United States her home.

On September 20, 2000, the Applicant became a naturalized United States citizen. She was issued a United States passport on February 20, 2001. On March 16, 2004, she renewed her Iranian passport that was previously issued to her. She has used her Iranian passport, for purposes of travel to enter Iran in 1995, 1996, 1997, 1999, 2002 and 2004. Her mother's health has caused her to return to Iran on a number of occasions. Her Iranian passport currently expires on May 3, 2009. (*See Applicant's Answer to SOR*). The Applicant remains in possession of her Iranian passport but indicates that it is not usable. The Applicant's Iranian passport was examined by the court during the hearing. The front and back cover of the Iranian passport that contained the Applicant's photograph and identification information was untouched. Four pages were torn out, sitting loose, but remained in their entirety. The Applicant did not return it to the Iranian government for fear that it could put her children at risk for harm from the Iranian Government. (Tr. P. 26).

The Applicant testified that her mother is still quite ill but that the Applicant has no plans to return to Iran. The Applicant's husband has an Iranian passport and traveled with the Applicant to Iran during the summer of 2004.

The Applicant testified that on October 17, 2005, she took her passport to her company Security Office to surrender it. She was told that they could not take a legal document from another country and hold it. (Tr. p. 31).

The record was left open to allow the Applicant to provide additional documentation. A letter from the Applicant to the Department Counsel dated November 21, 2005, states that she mailed her Iranian passport to the Iranian Embassy in Mexico City, Mexico. This letter is not certified by a notary, nor witnessed by her security officer. There is no evidence that what she put in the envelope to be mailed was her Iranian passport. Attached to the letter is a certificate of mailing showing that whatever was sent, it was sent first class mail. The letter and certificate of mailing do not, by themselves prove that what the Applicant mailed to Mexico was her Iranian passport. It is a self-serving letter at best. (*See Post-Hearing Exhibit*).

Prior to the hearing, the Applicant received a copy of the Money Memorandum dated August 16, 2000. (*See Government Exhibit 5*). She is aware of its provisions. She has chosen to retain her foreign passport. Her circumstances do not fall within any of the exceptions to the policy.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's mother, brother, sister and numerous in-law are citizens and residents of Iran. The Applicant's brother is an architect, her sister is a public school teacher. She maintains contact with her siblings about once a month or every other month.

Three letters of recommendation were submitted on the Applicant's behalf. The Director of Supply Chain, her immediate manager, and a colleague all indicate that the Applicant is dependable, motivated and hard-working. She is considered to be honest and hardworking and is a valuable asset to their company. (*See Applicant's Exhibits A, B and C*).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. 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 are:

Foreign Preference

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.

Condition that could raise a security concern:

1. The exercise of dual citizenship.

Conditions that could mitigate security concerns:

None.

Foreign Influence

A security risk 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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

Conditions that could mitigate security concerns:

None.

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 general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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 criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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."

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States

paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

The Applicant is a dual citizen of Iran and the United States. She considers herself an American citizen and has made the United States her home. At the time of the hearing the Applicant remained in possession of her Iranian passport. Admittedly, she tore several pages out her Iranian passport, but, otherwise did not destroy it. The passport remained intact and could be easily reassembled and was useable without notice of its imperfection. The record was left open to allow the Applicant the opportunity to submit additional evidence. She submitted a letter, and a certificate of mailing, stating that she sent her Iranian passport to the Iranian Embassy in Mexico City, Mexico. This letter does not prove that the Applicant actually surrendered her Iranian passport. Without certification from a notary or a witness, I cannot find that the letter alone meets the requirements of the Money Memorandum. Her circumstances do not fall within any of the exceptions to the policy. There is no discretion to go beyond the language of the stated exceptions. She has not demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against the Applicant under Guideline C (Foreign Preference).

With respect to Guideline B, the Applicant has immediate family members who reside in Iran. Although there is no evidence that any of her family members in Iran are associated in any way with the Iranian government, the Applicant has close ties of affection with her family. Her ties to the United States are still limited. Despite the provisions of the Money Memorandum, the Applicant has not met the requirements of surrendering her Iranian passport. Furthermore, there is also a question concerning her fear of the possible harm that the Iranian Government could cause her children. The possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guidelines C and B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guidelines C and B.

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.

Subparas. 1.a.: Against the Applicant 1.b.: Against the Applicant 1.c.: Against the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: Against the Applicant

Subparas. 2.b.: Against the Applicant

Subparas. 2.c.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge