

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant's application for, renewal of, and use of a foreign passport after being born a U.S. citizen demonstrate foreign preference. Applicant has neither surrendered the passport nor obtained formal approval for its use. Applicant is potentially subject to foreign influence where her grandmother, aunt, uncle, and cousins are citizens and residents of Iran. Clearance denied.

CASENO: 04-09473.h1

DATE: 05/31/2006

DATE: May 31, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-09473

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Esquire

Deputy Chief Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's application for, renewal of, and use of a foreign passport after being born a U.S. citizen demonstrate foreign preference. Applicant has neither surrendered the passport nor obtained formal approval for its use. Applicant is potentially subject to foreign influence where her grandmother, aunt, uncle, and cousins are citizens and residents of Iran. Clearance denied.

### **STATEMENT OF THE CASE**

Applicant challenges the 20 June 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of foreign preference and foreign influence. [\(1\)](#) She answered the SOR 30 June 2005, and requested a decision without hearing. On 30 October 2005, she responded to DOHA's 4 October 2005 File of Relevant Material (FORM). The record closed 23 November 2005, when Department Counsel indicated no objection to the response. DOHA assigned the case to me 28 November 2005.

### **FINDINGS OF FACT**

Applicant admitted the allegations of the SOR; accordingly, I incorporate those admissions as findings of fact.

Applicant--a 25-year-old intern employed by a defense contractor since June 2002--seeks access to classified information. She has not previously held a clearance.

Applicant was born in California in 1980. Through her father--an Iranian citizen residing in the U.S.--she derived Iranian citizenship. <sup>(2)</sup> She also has three siblings who are dual citizens of the U.S. and Iran. <sup>(3)</sup> The record does not reveal why her father was in the U.S. in 1980, but he was born in Iran--governed then by the Shah of Iran--in 1951. The Shah was overthrown in 1979, and Iran is now an Islamic republic with a history of hostile relations with the U.S.

Applicant grew up in the U.S. It does not appear that she has ever lived in Iran. However, sometime in the early 1990s she traveled to Iran to visit family. <sup>(4)</sup> Though the record does not indicate whether she traveled on a U.S. passport or an Iranian passport, I infer that she traveled on an Iranian passport. <sup>(5)</sup> In November 2000, she either applied for, or renewed, her Iranian passport, valid until November 2005. In approximately August 2001, she traveled to Iran for a month to visit relatives and sight-see.

When Applicant applied for her clearance in April 2003 (Items 4, 5), she disclosed her dual citizenship, her November 2000 Iranian passport, and her relatives living in Iran. <sup>(6)</sup> Applicant prefers to retain her Iranian citizenship and passport so she may travel to Iran in the future. In her June 2004 sworn statement, she stated:

The reason I continue to hold my Iranian passport is for easier entrance into Iran when I visit family. This occurs every several years. For example, the last time I traveled to Iran was four years ago and another nine to ten years before then. With the Iranian passport, I avoid the problems I would have entering with a U.S. passport. Possessing an Iranian passport does not effect my complete loyalty to the U.S. Government. I consider myself a US citizen and only a US citizen. However, **if it is absolutely necessary I will be willing to sacrifice my convenience and renounce my Iranian citizenship and passport. If it is not necessary, I would prefer to keep the passport so that I can travel to see family in Iran without the trouble associated with the US passport.** (Item 6, emphasis added).

Applicant has not surrendered her Iranian passport. Although she stated a conditional willingness to do so in June 2004, she did not repeat that willingness in her Answer to the SOR--at which time she had been informed of the provisions of the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C<sup>3</sup>I) Memorandum of 16 August 2000 <sup>(7)</sup> regarding foreign passports--or her response to the FORM. She has not taken any steps to comply with the provisions of the Money Memo regarding foreign passports. She has not obtained U.S. Government approval for continued possession and/or use. Similarly, she indicated a conditional willingness to renounce her Iranian citizenship.

Iran is a fundamentalist Islamic republic with a poor human rights record and confrontational relations with the U.S.

Relations are unlikely to improve given Iran's efforts to acquire nuclear weapons, its sponsorship of, support for, and involvement in, international terrorism, and its violent opposition to the Middle East peace process.

## **POLICIES AND BURDEN OF PROOF**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline C (Foreign Preference) and Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. [\(8\)](#)

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C<sup>3</sup>I) issued a memorandum to clarify the application of Guideline C., Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, C<sup>3</sup>I memorandum **"requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."** (Emphasis added).

## **CONCLUSIONS**

The government established a case for disqualification under Guideline C case by showing that Applicant obtained an Iranian passport in November 2000, used it to travel to Iran in August 2001, and is likely to use it to travel to Iran in the future, despite being born a U.S. citizen. This conduct implicates disqualifying conditions (DC) 1 and 2, [\(9\)](#) and Applicant has not mitigated the security concerns. Although she has been a dual citizen of Iran and the United States since her birth, her Iranian citizenship would have little security significance if based solely on her father's citizenship. For her conduct to fall within the security concerns of Guideline C, Foreign Preference, she must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C. The government has a compelling interest in ensuring those entrusted with this nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen.

Applicant potentially met only one of the mitigating conditions (MC) for foreign preference. MC 4 might have applied because Applicant had expressed a willingness to renounce her foreign citizenship. However given that her willingness was conditioned on her obtaining her clearance and she has taken no action to renounce her Iranian citizenship, this MC cannot apply. Further, none of the other MCs apply. MC 1 does not apply because Applicant's dual citizenship is not based solely on her father's citizenship, but is based on her active exercise of dual citizenship after being born a U.S. citizen. MC 2 does not apply because all indicators of possible dual citizenship have occurred since Applicant obtained U.S. citizenship. MC 3 does not apply because Applicant's conduct has not been sanctioned by the U.S.

The aforementioned Money Memorandum effectively controls the resolution of the foreign preference issue. The memorandum provides that Applicant's past possession and use of her foreign passport can be mitigated only if Applicant surrenders the foreign passport or obtains U.S. Government approval for its use. Applicant has undertaken neither action. Further, the Appeal Board has ruled that possession of an expired passport does not satisfy the Money Memo requirement for surrender of the passport. *See*, DISCR Case No. 01-24306, September 30, 2003. In addition, Applicant seems likely to renew and use her Iranian passport in the future. While Applicant has a legal right to maintain her dual citizenship with its attendant benefits and responsibilities, she has not demonstrated that she can be counted on to always act in preference to the United States. I resolve Guideline C against Applicant.

The government also established a case for disqualification under Guideline B by showing that Applicant's grandmother, aunt and uncle, and cousins are citizens and residents of Iran. [\(10\)](#) Her travel to Iran and phone contacts demonstrate close ties of affection. Applicant has not mitigated the security concerns raised by her relatives living in Iran. She has not met her burden of establishing that her relatives are not agents of a foreign government, and are not so situated as to provide a point of influence on her. [\(11\)](#) I resolve Guideline B against Applicant. [\(12\)](#)

## **FORMAL FINDINGS**

### **Paragraph 1. Guideline C: AGAINST APPLICANT**

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: For 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. Clearance denied.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Applicant's mother is also a native-born U.S. citizen. Her father became a naturalized U.S. citizen in September 1998.
3. And her mother may be considered a dual citizen under Iranian law.
4. The record is unclear when she actually traveled to Iran. The SOR alleges, and she admits, traveling to Iran in approximately 1991. Her July 2004 sworn statement puts the travel nine (approximately 1995) or ten (approximately 1995) years earlier.
5. Applicant has never claimed she traveled to Iran on a U.S. passport. Because of her age (no more than fourteen), it is unlikely Applicant traveled to Iran alone. Her mother may be eligible for only a U.S. passport and has no Iranian relatives. Her father was not yet a U.S. citizen and could only have returned to Iran on an Iranian passport, which given

the length of time he had been in the U.S. he would have had to renew before traveling to Iran.

6. All relatives of her father and citizens and residents of Iran: Applicant's grandmother, aunt and uncle, and her cousins. In addition to her travel to Iran to visit these relatives, she speaks to them by phone several times per year.

7. The so-called "Money Memo" because it was signed by Arthur L. Money.

8. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).

9. E2.A3.1.2.1. The exercise of dual citizenship; E2.A3.1.2.2. Possession and/or use of a foreign passport;

10. 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;

11. 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 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.

12. Although I find subparagraph 1.b. for Applicant because her travel to Iran only establishes her close ties of affection to her relatives there. Her travel to Iran has no independent security significance under Guideline B.