

DATE: January 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09541

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Department Counsel

FOR APPLICANT

John Patrick Murphy, Attorney At Law

SYNOPSIS

The Applicant has surrendered his Iranian passport to the proper authorities and it has been cancelled. He has also renounced his Iranian citizenship. His casual and infrequent contact with his siblings in Iran poses no security risk. Clearance is granted.

STATEMENT OF THE CASE

On July 25, 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 in writing on August 19, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 21, 2005. A notice of hearing was issued on October 13, 2005, scheduling the hearing for November 28, 2005. At the hearing the Government presented seven exhibits. The Applicant presented seven exhibits and called three witnesses. He also testified on his own behalf. The record was left open until close of business on December 12, 2005, to allow the Applicant to submit additional supporting documentation. The Applicant submitted one Post-Hearing Exhibit consisting of three pages. The official transcript (Tr.) was received on December 12, 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 exhibits and the testimony. The Applicant is 52 years of age and holds a master's Degree in Electrical Engineering. He is employed as a Senior Engineer for a defense contractor. He seeks a security clearance in connection with his 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 he has acted in such a way as to show a preference for another country over the United States.

The Applicant was a dual citizen of Iran and the United States. He was born in Iran. He came to the United States in 1977 on a student visa for better opportunities. While attending college, he married a native born United States citizen in 1982. They have four children who were all born in the United States. The Applicant became a United States citizen in 1986 and at that time he renounced his Iranian citizenship. The Applicant has purchased a home here, and besides his work, is involved in raising his children to be responsible, happy adults.

After becoming a United States citizen, the Applicant applied for and was issued an Iranian passport in September 1998 in order to travel to Iran. He used his Iranian passport instead of his United States passport to enter and exit Iran in July 2000. He went to Iran to get his mother and brothers and take them to Turkey to help them obtain their green cards and complete the required immigration paperwork in order to ultimately be able to come to the United States.

The Applicant's mother currently lives with him in the United States. She is still an Iranian citizen but, has her green card and is in the process of becoming a United States citizen. Her house in Iran, the value of which is approximately \$200,000 in United States dollars, has been on the market for sale for the past six months. She will arrange to have the money transferred to a bank in the United States once the property is sold.

The Applicant's current employer hired him in November 2002. After learning of the provisions of the Money Memorandum, the Applicant contacted his security office at work who advised him to send his Iranian passport to Iran. The Applicant sent his passport with a letter to the Embassy of Pakistan, Iranian Interest Section in Washington D.C. The letter indicated that he is an American citizen who has no desire to ever go to Iran in the future. His passport is expired and he does not want to renew it. (Tr. p. 89).

The Applicant submitted a copy of the letter he sent to the Embassy of Pakistan dated September 22, 2005. (*See Applicant's Post-Hearing Exhibit*).

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

The Applicant has a sister, three brothers, a step-sister and a step-brother who are citizens of and reside in Iran. One of his brothers does engineering consulting work. He has had a permanent residence card in the United States since 2000 and travels back and forth between Iran and the United States. Another brother owns a clothing store. The third brother owns a car rental business. His sister is a housewife. His step-sister is a housewife and his step-brother is a car dealer. The Applicant may contact his siblings in Iran once every four or five months. (Tr p. 97).

The Applicant's mother applied for visas for all of her children in Iran and is currently sponsoring all of them to come to the United States. The requisite paperwork has been completed. (*See Applicant's Exhibit G*). None of the Applicant's siblings in Iran are affiliated in any way with the Iranian government. They are all waiting for their first opportunity to come to the United States to make it their permanent home.

The Applicant testified that under no circumstances could he be pressured by one of his relatives in Iran or the Iranian government to release classified or sensitive information that could damage the United States. (Tr. p. 88).

The Applicant's wife testified that the Applicant is very involved in helping to raise their four children. He has been the coach of his children's soccer team and involved in the children's school activities. He is responsible and trustworthy. (Tr. p. 18-35).

Two of the Applicant's coworkers testified that he is conscientious, loyal, and trustworthy. He is a dedicated employee and a good friend. He is also grateful to God for the United States and the opportunities it provides its citizens. (Tr. pp. 41-54).

A letter from the Applicant's manager dated October 10, 2003, indicates that the Applicant possesses superior engineering knowledge and a project management skill set that is a real asset to the United States Navy. (See Applicant's Exhibit E).

A patent created by the Applicant to help save the government money and various other certificates of achievement demonstrate the Applicant's value and dedication to his job. (See Applicant's Exhibits D and F).

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.

Conditions that could raise a security concern:

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

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

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;

Condition that could mitigate security concerns:

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 the loyalty of the person(s) involved and the United States.

3. Contact and correspondence with foreign citizens are casual and infrequent.

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 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, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant was a dual citizen of the Iran and the United States who possessed an Iranian passport. Disqualifying Conditions, (1) *The exercise of dual citizenship* and (2) *Possession and/or use of a foreign passport* apply. However, Mitigating Conditions (1) *Dual citizenship is based solely on parent's citizenship or birth in a foreign country* and (4) *Individual has expressed a willingness to renounce dual citizenship* are applicable.

Since learning that possession of a foreign passport is not permitted when holding a security clearance, in compliance with the provisions of the Money emorandum, he surrendered his foreign passport to the Embassy of Pakistan, Iranian Interest Section in Washington D.C. He has also renounced his Iranian citizenship. Under the circumstances, the Applicant has done everything possible to be in compliance with the requirements of the directive and the Money emorandum. Accordingly, he has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the evidence establishes that he is not vulnerable to foreign influence. Disqualifying Condition (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* applies. However, itigating Conditions (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 the loyalty of the person(s) involved and the United States* and (3) *Contact and correspondence with foreign citizens are casual and infrequent* are applicable. Although the Applicant's sister, three brothers, a step-sister and a step-brother are citizens and residents of Iran, they are not associated with the Iranian government or in a position to place foreign influence on the Applicant, or in a position to be exploited by the Iranian Government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. Furthermore, the Applicant's contacts with his foreign relatives are very limited, and are not of a nature to influence his security worthiness. The Applicant has cut all ties with Iran, except his very infrequent contact with his siblings. oreover, the Applicant has a wife and four children who were born in the United States who he is responsible to take care of. It is clear that the Applicant understands his responsibility to the United States in holding a security clearance. Based on the foregoing, the Applicant does not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C and Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his 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: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

2.b.: For the Applicant

2.c.: For the Applicant

2.d.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge