

DATE: October 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09584

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Mohsen Maali, Personal Representative

SYNOPSIS

The Applicant is a dual citizen of Iran and the United States. She possesses an Iranian passport despite 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.

STATEMENT OF THE CASE

On June 22, 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 July 1, 2005, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 10, 2005. A notice of hearing was issued on August 30, 2005, scheduling the hearing for September 29, 2005. At the hearing the Government presented five exhibits. The Applicant presented nine exhibits and testified on her own behalf. The record was left open until October 7, 2005, to allow the Applicant an opportunity to provide additional evidence. The Applicant submitted no additional evidence and the record was closed on October 7, 2005. The official transcript (Tr.) was received on October 11, 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 37 years of age and has a Bachelors Degree in Computer Science and is working on her Masters Degree. She is employed as a Software 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. She and her husband, also from Iran, were married in Iran in 1996, and in 1997, they moved to the United States. She traveled to Iran in 1998 and again in 2000. The Applicant became a United States citizen in February 2001.

The Applicant maintains an Iranian passport that was issued to her on March 1996, and renewed it in September 2001, after becoming a United States citizen. She has never used her Iranian passport, but would like to keep it if she ever needed to use it. Her mother has a heart condition that may require her to travel to Iran in the future. The Applicant's Iranian passport currently expires in April 2006. (*See* Government Exhibit 2)

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 one 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, father, three brothers, two sisters, father-in-law, two aunts and one uncle are citizens of and reside in Iran. The Applicant sponsored her parents to become United States citizens. Her parents divide their time between Iran and the United States. They are currently residing in the United States with the Applicant. The Applicant's mother-in-law is also a citizen of Iran and resides in Iran part-time and in the United States with the Applicant, as a permanent legal resident part-time. The Applicant sends about \$4,000.00 per year to her parents and to her mother-in-law in Iran. The Applicant is currently sponsoring her three brothers and two sisters for permanent entry into the United States.

The Applicant submitted information she obtained on the internet from various news sources concerning the improved political relationship between Iran and the United States. (*See* Applicant's Exhibits C through I).

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 possesses a foreign passport in order to travel to Iran if she ever needs to. She is well aware of the Money Memorandum and has failed to comply with its provisions. 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. While her reasoning is understandable, 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 many close 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, there is strong evidence of affection with her family. Despite the provisions of the Money memorandum, the Applicant has chosen not to surrender her foreign passport in order to be able to travel freely to Iran to visit her family. 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

Subparas. 2.d.: Against the Applicant

Subparas. 2.e.: Against the Applicant

Subparas. 2.f.: Against the Applicant

Subparas. 2.g.: Against the Applicant

Subparas. 2.h.: 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