

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: The Applicant has renounced his Iranian citizenship and returned his Iranian passport to the proper authorities in compliance with the *Money emorandum* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudication Guidelines," dated September 1, 2000) (Government Exhibit 6). The Applicant is not subject to coercion concerning his relatives who are still in Iran. Mitigation is shown. Clearance is granted.

CASENO: 04-09982.h1

DATE: 01/25/2006

DATE: January 25, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09982

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has renounced his Iranian citizenship and returned his Iranian passport to the proper authorities in compliance with the *Money Memorandum* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudication Guidelines," dated September 1, 2000) (Government Exhibit 6). The Applicant is not subject to coercion concerning his relatives who are still in Iran. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On May 19, 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 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 June 6, 2005, and requested a hearing. The case was received by the undersigned on July 19, 2005, and a Notice of Hearing was issued on August 2, 2005.

A hearing was held on August 25, 2005, at which the Government presented six documentary exhibits. Testimony was taken from the Applicant, who also called two additional witnesses and submitted four exhibits. The transcript was received on September 7, 2005.

FINDINGS OF FACT

The Applicant is 50, married and has a Master of Science degree. He is employed by a defense contractor as a Member of Technical Staff, and he seeks to retain a DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

The Applicant was born in Iran in 1955. He left Iran for the United Kingdom to attend school in 1976. He moved to the United States in 1982. In 1983, the Applicant married a native born American citizen. The Applicant became a naturalized American citizen in 1987 and has held a security clearance almost continually since 1989.

Paragraph 1 (Guideline C: Foreign Preference). The Government alleges in this paragraph that the Applicant has engaged in actions which show a preference for another country (Iran) over the United States. The Applicant admitted the factual allegations of subparagraphs 1.a. through 1.c. Those admissions are deemed findings of fact.

The Applicant obtained an Iranian passport in 1995. This passport was renewed in 2000 and was valid until October 2005. (Government Exhibit 3.) As a person who was born in Iran the Applicant was almost required by the Iranian government to have an Iranian passport in order to enter or leave Iran. (Government Exhibit 4.)

The Applicant states that he obtained the Iranian passport in order to travel easily to Iran to visit his family. Using that passport, the Applicant traveled to Iran seven times between 1996 and 2002. (Government Exhibit 2 at 4.)

After the Applicant was interviewed by the Defense Security Service concerning his Iranian passport in February 2004, he went to his Security Manager to ask for advice. The decision was to wait for further developments. When the Applicant received the SOR in May 2005, he once again immediately went to his Security Manager for assistance. Using the offices of the Security Manager, the Applicant sent his Iranian passport to the Iranian Interest Section at the Pakistani Embassy in June 2005. (Applicant's Exhibits A, B and D, Transcript at 51-52.) The Applicant understands the

difficulty in traveling to Iran without an Iranian passport and is comfortable with his decision. (Transcript at 40.)

The Applicant does not believe himself to be a dual citizen of Iran and the United States. His purpose in obtaining an Iranian passport was to facilitate travel and not to show that he was a citizen of Iran. (Transcript at 39.) He believes that he renounced his Iranian citizenship when he was naturalized. The Applicant states, "I mean I was born in Iran and I can't help that; but as far as being a Citizen, I am only a Citizen of the United States and that's where my loyalty resides." (Transcript at 41.)

Paragraph 2 (Guideline B: Foreign Influence). The Government alleges in this paragraph that the Applicant may have foreign connections which potentially make him vulnerable to coercion, exploitation or pressure. The Applicant admitted subparagraphs 1.b. through 1.d. Those admissions are deemed findings of fact.

1.a. The Applicant's father is a citizen of Iran. After the Applicant's mother's death in 2002, his father moved to the United States and lived with the Applicant's sister, a naturalized American citizen. In early 2005, the Applicant's father elected to return to Iran. The Applicant accompanied his father to London, England. There the Applicant saw his father off to Iran. (Transcript at 32-33.) The Applicant and his father understand that, because of the current state of relations between the United States and Iran, the Applicant does not intend to travel to Iran, even when his father passes away. (Transcript at 40.)

1.b. In addition to his father, the Applicant also has a brother and sister who are Iranian citizens and continue to live there. He talks to his sister once every month or so, to check on his father. (Transcript at 44-45.) Neither his father or his siblings have any relation to the Iranian government. (Transcript at 34-37.)

1.c. The Applicant also has a brother who lives in Denmark. He is not sure, but he believes his brother to be a Danish citizen. (Transcript at 35-36.)

1.d. As discussed above, the Applicant admits traveling to Iran seven times between 1996 and 2002 using his Iranian passport.

The Applicant understands his security responsibilities. He does not believe his family would be approached by a foreign power, but he does not believe he would be vulnerable if such an approach was made. In response to a hypothetical question from Department Counsel, he stated, "I mean it is a very hard thing to say, but I don't think I would - - I don't think I am willing to jeopardize the security of the United States for any reason." (Transcript at 46.)

Mitigation.

The Applicant's Security Manager testified and provided a statement (Applicant's Exhibit B). On page 1 of the statement, the Security Manager states, "It has been my experience that [the Applicant] demonstrates a steadfast willingness to support the security requirements imposed by contract or government regulation." In his statement, and testimony, the Security Manager described situations, in the personal and professional arenas, where the Applicant has been cooperative and responsive to his security responsibilities. (Transcript at 49-56.)

Applicant's Exhibit C consists of character references from the Applicant's supervisor and co-workers. His supervisor states, "[The Applicant] takes the responsibilities related to his security clearance very seriously." (Applicant's Exhibit C at 1.) Others describe the Applicant as a person who "has always exhibited the utmost in personal integrity," is "reliable and conscientious," and has "high moral character." (Applicant's Exhibit C at 2-4.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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 set forth under CONCLUSIONS, below.

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct

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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections or demonstrated a foreign preference that demonstrates untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration

and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections which could cause a security concern (Guideline B); and that the Applicant was a dual citizen of Iran and the United States, that he had a valid Iranian passport, and that he traveled to Iran several times using that passport (Guideline C).

The Applicant, on the other hand, has successfully mitigated the Government's case. Regarding Guideline B, the Applicant has three family members remaining in Iran. The Applicant, his father and his siblings understand that the Applicant cannot travel to Iran at the present time, even if his father is sick or dies. The Applicant openly discussed making this difficult, but in his opinion necessary, decision. None of his family members who are still living in Iran are agents of the Iranian government. I have weighed the Applicant's statement at page 46 of the transcript in regards to a hypothetical question, discussed above, against the considerable concrete evidence that shows he is a person who goes out of his way to be pro-active in the area of security. In this regard, I am impressed by the statement and testimony of his Security Manager. Under the particular circumstances of this case, the relationship between the Applicant and his remaining relatives in Iran are not of a closeness to affect his security worthiness.

Disqualifying Condition 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*) is the only one which applies on its face. Under the particular facts of this case, the following Mitigating Condition applies: 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 in a way*

that could force the individual to choose between loyalty to the person(s) involved and the United States).

Turning to Guideline C, the Applicant has indicated his willingness to renounce his Iranian citizenship, if he is one, and he returned his Iranian passport to the appropriate authorities. It is particularly noteworthy how the Applicant and his Security Manager took care of this situation. This action brings him within the requirements of the *Money Memorandum*.

Disqualifying Condition E2.A3.1.2.1. applies, (*Possession and/or use of a foreign passport*). However, under the particular facts of this case, Mitigating Conditions E2.A3.1.3.1. (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*), and E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*) also apply.

I have carefully considered the evidence of record, especially the fact that the Applicant is from Iran. The evidence shows that the Applicant is a patriotic American citizen. He is knowledgeable about security and has taken steps to reduce his vulnerability. Using the whole person standard, the Applicant has mitigated the security significance of his foreign connections and alleged foreign preference. He is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

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.

Subparagraphs 1.a. through 1.c.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraphs 2.a. through 1.d.: For the Applicant.

DECISION

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

Wilford H. Ross

Administrative Judge