

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: This 70-year-old staff engineer for a major defense contractor was born in Iran in 1935. He first came to the United States in the 1950s, returned in the 1960s to attend college and obtain a MA degree in 1968. After returning to Iran in 1969, he came back one last time in 1980, obtained a Green card, and eventually became a U.S. citizen in 1994. He retains both his Iranian citizenship and passport, despite knowing the latter precludes him from holding a DoD security clearance. His ties to Iran are minimal, considering his long and close ties to the U.S., and do not raise any significant security risks. However, his retention of the Iranian passport has not been mitigated. Clearance is denied.

CASENO: 04-10091.h1

DATE: 01/17/2006

DATE: January 17, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10091

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 70-year-old staff engineer for a major defense contractor was born in Iran in 1935. He first came to the United States in the 1950s, returned to the U.S. in the 1960s to attend college and obtain a MA degree in 1968. After returning to Iran in 1969, he came back one last time in 1980, obtained a Green card, and eventually became a U.S. citizen in 1994. He retains both his Iranian citizenship and passport, despite knowing the latter precludes him from holding a DoD security clearance. His ties to Iran are minimal, considering his long and close ties to the U.S., and do not raise any significant security risks. However, his retention of the Iranian passport has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On May 19, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2,

1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On June 27, 2005, Applicant submitted a response to the allegations set forth in the SOR, and

elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was

assigned to me on August 17, 2005. A Notice of Hearing was issued on September 16, 2005, setting

the hearing for October 13, 2005. At the hearing, the Government offered seven documents (Government's Exhibits (GX) 1-7). Applicant testified and offered one document (Applicant's Exhibit (AX) A). The transcript was received at

DOHA on October 27, 2005.

FINDINGS OF FACT

Applicant is a 70-year-old engineer, born in Iran in 1935. He came to the United States in 1955, to attend college. He obtained a Green Card and worked here during the 1960s, obtaining a DoD security clearance along the way (Tr at 29). He became a citizen in 1994 and obtained a U.S. passport that same year. The SOR contains three allegations, 1.a.-1.c., under Guideline C (Foreign Preference) and five allegations under, 2.a.-2.e., under Guideline B (Foreign Influence). In his response to the SOR Applicant admits, with explanations, all allegations under both Guidelines. The factual admissions are accepted and incorporated as Findings of Fact.

After considering the totality of the evidence of record, I make the following Findings of

Fact as to each SOR allegation:

Guideline C (Foreign Preference)

1.a. - Applicant holds a valid Iranian passport, and considers himself to be a dual citizen of Iran and the United States.

1 .b. - In 2000, Applicant applied for and received an Iranian passport (issued on May 3,2000

and expiring on May 4, 2010). Applicant has family ties to Iran and, under Iranian law, which does not recognize dual citizenship, he believes he is required to have an Iranian passport to enter that country to visit his family in the future. He has not used the Iranian passport to enter that country. Since becoming a U.S. citizen in 1994, he has used only his U.S. passport for all foreign travel (GX 2, GX 3). However, he intends to retain his Iranian passport, knowing the adverse consequences imposed by DoD Policy (GX 7, the Money Memorandum).

1 .c. - As of June 17, 2004, when he was interviewed by an agent of the Defense Security Service (DSS), Applicant still retained that valid Iranian passport, but was unable to locate it. As of the hearing on October 13, 2005, Applicant had recently renewed the Iranian passport in order to be able to visit Iran, if he wished to do so in the future (Tr at 21). As cited above, Applicant intends

to retain his Iranian passport.

Guideline B (Foreign Influence)

2 .a. - Applicant has siblings living in Canada, Germany and England, and others still residing in Iran (GX 2). The later siblings are in their 60s, not associated with the Iranian government, and do not know what Applicant does for a living

(Tr at 26).

2.b. - Applicant's nieces are citizens and residents of Iran.

2.c. - Applicant's brother is a retired family law judge in the Iranian Judicial System. This

brother is retired, and now resides in the United Kingdom (GX 2). Applicant speaks with him by telephone about once a month. The brother has visited Applicant in the U.S. one time.

2 .d. - Applicant maintains contact with his former colleagues at a technical university in Iran.

His contact with these colleagues (from the 1969-1980 period) is mostly by holiday greeting card.

Some now reside in Europe.

2.e. - Applicant owns property in Iran. He purchased it along with some of his Iranian university friends many years ago, has no documentation on the property, and "no way of collecting

on the property" (GX 2). He believes his interest is worth perhaps \$5,000.00 (Tr at 24).

Applicant was born in 1935. He came to the U.S. in the early 1960s. He was issued a security clearance by DoD in 1962 (GX 1 and Tr at 23), long before he became a U.S. citizen. He studied at a major U.S. university from 1962-1969, at which time he obtained a MA in Physics. He returned to Iran and taught at an Iranian university from 1969 to 1980, after the overthrow of the Shah, at which time he returned to the U.S. He has resided here ever since and became a U.S. citizen in 1994. He is divorced and has an American born daughter, now married and living in Italy.

He decided to stay here and become a U.S. citizen because he appreciated the life he was able

to achieve here (Tr at 33). He would not return to Iran to live even if the present government changed (Tr at 34). He is 70 years old, and he is where he wants to be (Tr at 34).

During cross-examination, Department Counsel asked Applicant about his current Iranian

passport. Possession of the Iranian passport meant that he could enter and exit that country without

the risk of harassment and/or delay by Iranian authorities that might occur if he used his U.S. passport (Tr at 39, 40). He stated that he could probably retain his employment in a non-classified

position within the company (Tr at 40). Applicant understood that possession of the passport meant

that he was disqualified from holding a DoD security clearance (Tr at 39 and GX 7). Applicant considered his alternatives and decided to retain the Iranian passport (Tr at 39-44).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the

individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2. 1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving

those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security

concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant came to the U.S. more than 40 year ago, when in his mid 20s, to obtain a higher

education. Iran was viewed differently then, an ally under the Shah. It was still true when he returned to Iran to see his ill mother and he stayed to teach at a university from 1969 to 1980, at which time he left for good. He stayed for a year or two in London, and then returned permanently

to the U.S. in 1982. His parents are both deceased and he has not returned to Iran for at least two decades. While it is true that he has some relatives remaining in Iran, many have left for western countries and his contacts with those who have remained must be considered minimal in the context

of his long and deep ties to the United States.

Guideline C (Foreign Preference)

Applicant exercises dual citizenship with Iran and possesses a valid Iranian passport, which he intends to retain.

Disqualifying Conditions (DC). DC 1 -the exercise of dual citizenship - is applicable; as is

DC 2 - possession and/or use of a foreign passport. Mitigating Condition (MC) 1 is applicable, since his Iranian citizenship is derived from his parents, but he has exercised that citizenship by obtaining and renewing his Iranian passport. MC 4 is not applicable since Applicant has expressed an intent to retain his dual citizenship, so he can retain his Iranian passport.

Guideline C (Foreign Influence)

Iran is considered by the U.S. Government to be "hostile" to the United States (GX 5 and GX

6). The DOHA Appeal Board has held that: "an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk" (Appeal Board Decision, DISCR Case No. 0 1-26893 (October 16, 2002)): Other Appeal Board guidance states that: "family ties in

[any] foreign country raise a prima facie security concern" that requires an applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is

clearly consistent with the national interest to grant or continue a security clearance for him" (Appeal

Board Decision, ISCR Case No. 02-06478 (May 19. 2003)).

Considering the totality of the evidence, the family ties cited in the SOR establish a risk in

the abstract, in that the absence of problems in the past does not mean there will not be any in the future, but such absence must be taken into account with all other relevant evidence. There is no evidence suggesting that Applicant's family members are agents of a foreign government. While they might be pressured to ask Applicant to act improperly, it is not likely that Applicant would feel himself forced to decide where his loyalties lie.

Guideline C - "The Concern: A security risk may exist when [members of]an individual's

immediate family.. . are (1) not citizens of the United States or (2) may be subject to duress. These

situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure."

Disqualifying Condition - (1) " an immediate family member.. . is a citizen of, or resident or present in, a foreign country." Mitigating Condition (MC) 1, "the immediate family members.., are not agents of a foreign power or are in a position to be exploited by a foreign power in a way that could force the individual to choose between his loyalty to the persons involved and the U.S." is applicable.

All of the evidence shows Applicant to be a man of integrity, and one who understands his

responsibilities to his country. At the same time, he has made an informed decision to retain his Iranian passport, knowing that meant he would be denied a security clearance.

Based on the totality of the evidence, I conclude that Applicant does not possess the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are

hereby rendered as follows:

Guideline C (Foreign Preference) Against the Applicant

Subparagraph I.a. Against the Applicant

Subparagraph I .b. Against the Applicant

Subparagraph 1 .c. Against the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph I.a. For the Applicant

Subparagraph 1 .b. For the Applicant

Subparagraph 1 .c. For the Applicant

Subparagraph 1 .d. For the Applicant

Subparagraph I.e. For the 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE