

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is employed by a federal contractor. He, his wife, children, and mother are U.S. citizens residing in the U.S. His brother and mother-in-law are citizens of and reside in Iran. He holds an Iranian passport and dual citizenship status. Using the "whole person concept" he has not mitigated security concerns under Guideline B foreign influence. He expressed a willingness to renounce his Iranian citizenship, but he has not surrendered his valid Iranian passport. His reasons for retaining his passport are for personal convenience. He has not mitigated security concerns under Guideline C foreign preference. Clearance is denied.

CASE NO: 04-10103.h1

DATE: 06/27/2006

DATE: June 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10103

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR Government

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is employed by a federal contractor. He, his wife, children, and mother are U. S. citizens residing in the U. S. His brother and mother-in-law are citizens of and reside in Iran. He holds an Iranian passport and dual citizenship status. Using the "whole person concept" he has not mitigated security concerns under Guideline B foreign influence. He expressed a willingness to renounce his Iranian citizenship, but he has not surrendered his valid Iranian passport. His reasons for retaining his passport are for personal convenience. He has not mitigated security concerns under Guideline C foreign preference. Clearance is denied.

STATEMENT OF THE CASE

On May 31, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR alleged reasons under Guidelines B (foreign influence) and C (foreign preference) 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 Applicant's security clearance.

In a written statement dated June 22, 2005, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on September 29, 2005. A Notice of Hearing was issued October 14, 2005, scheduling the hearing for November 1, 2005. The hearing was held as scheduled. At the hearing, the government offered eight exhibits that were admitted without objections. Applicant submitted no exhibits and testified in his own behalf. The transcript (Tr.) was received November 16, 2005.

FINDINGS OF FACT

Applicant admitted to all allegations of foreign influence under Guideline B and three of four factual allegations pertaining to foreign preference under Guideline C. His admissions are incorporated herein as findings of fact. I make the following additional findings of fact.

Applicant is a 64-year-old employee of a federal contractor.⁽¹⁾ He was a citizen and resident of Iran when the Iranian revolution occurred in 1979. He was detained in the country and his multi-million dollar construction business was confiscated by the Iranian government.⁽²⁾ One of his business partners was a general in the Shah's air force and was executed the first day after the revolution.⁽³⁾ His wife and two children immigrated to the United States in 1983.⁽⁴⁾ All are now U.S. citizens.⁽⁵⁾ He immigrated to the U. S. in 1985.⁽⁶⁾ His mother is a citizen and resident of the U. S. and his father is deceased.⁽⁷⁾ He holds an Iranian passport that expires on November 23, 2006.⁽⁸⁾ He is a dual citizen of Iran and the United States.⁽⁹⁾ He served in the Iranian Army from June 20, 1966, until August 20, 1967.⁽¹⁰⁾

Applicant's brother and his wife are citizens and residents of Iran.⁽¹¹⁾ They have two daughters, one who is also a citizen and resident of Iran and the other is married and living in Canada.⁽¹²⁾ His brother is actively seeking an entry visa to the U. S. to immigrate to this country. He is a private engineering consultant and has no affiliation with the Iranian government.⁽¹³⁾ Applicant last traveled to Iran in 2002 for his niece's wedding.⁽¹⁴⁾ He was detained at the airport, questioned about his family and where he worked, filled out a five-page questionnaire, and was released.⁽¹⁵⁾ When traveling to Iran he uses his Iranian passport. He has never used his U.S. passport to enter Iran, as it is his belief that he would not be permitted to enter the country.⁽¹⁶⁾

He is willing to renounce his Iranian citizenship and to surrender his passport.⁽¹⁷⁾ He has no plans to renew his passport, but was equivocal when asked what he would do if his brother could not immigrate to the U.S.⁽¹⁸⁾

Q. And do you intend to renew it [after it expires]?

A. I don't think so if my brother, hopefully, by that time he would be able to come here.

Q. But if your brother is unable to get a visa into the United States, you will renew that passport?

A. If I need to visit him, I normally do not visit him unless there is an occasion. Like the last time I went there, it was my niece's wedding. I went there for 3 days 3 years ago.⁽¹⁹⁾

His wife's mother, age 85, lives in Iran. She speaks no English and is too old to move to the U.S. Applicant talks with her and visits her when he goes to Iran.⁽²⁰⁾ His deceased father-in-law was a general in the Shah's army. He died before the 1979 revolution.⁽²¹⁾

The government of Iran is controlled by radical Islamic clerics. The State Department reports it has a poor record of protecting human rights.⁽²²⁾ Iran has a history of poor relations with the U.S. because of Iran's efforts to acquire nuclear weapons and other weapons of mass destruction, its support for and involvement in international terrorism, and its violent opposition to the Middle East peace process.⁽²³⁾

POLICIES

"[No] one has a 'right' to a security clearance."⁽²⁴⁾ As Commander-in-Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information."⁽²⁵⁾ The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."⁽²⁶⁾ Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information.⁽²⁷⁾

The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. [\(28\)](#)

Once the Government establishes its case, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. [\(29\)](#) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." [\(30\)](#) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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. [\(31\)](#) Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, not actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case:

Guideline B (foreign influence) E2.A2.1.1. *(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),*

Guideline C (foreign preference) E2.A3.1.1. *(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).*

CONCLUSIONS

Foreign Influence

The government has established its case under Guideline B. Applicant's brother and his wife's mother are citizens of and residents of Iran. Foreign Influence Disqualifying Condition (FI DC) 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 applicable. Applicant has traveled to Iran in the past three years to visit his brother and his family. A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U. S., or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.

Under the Directive, potentially disqualifying conditions may be mitigated through the application of the "whole person" concept and specific mitigating conditions. When the Government produces evidence raising potentially disqualifying conditions, an Applicant has the burden to produce evidence to rebut, explain, extenuate, or mitigate the conditions. (Directive, ¶ E3.1.15.) The government never has the burden of disproving a mitigating condition. [\(32\)](#)

Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. provides (*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*). Applicants must establish: (1) that the individuals in question are not "agents of a foreign power," and (2) that they are not in a position to be exploited by a foreign power in a way that could force the applicant to chose between the person(s) involved and the United States. [\(33\)](#)

Applicant's brother and his mother-in-law do not meet the definition of "agent of a foreign power" under 50 U.S.C. § 438(6) and 50 U.S.C. § 1801(b). Similarly, they would not be considered as an "agent of a foreign power" under the more expansive definition adopted by the Appeal Board. The available evidence indicates his brother and mother-in-law have no ties to or economic dependence upon the Iranian government. As the Iranian revolutionary government confiscated Applicant's successful construction company and killed one of his business partners, it is likely his brother and mother-in-law have no feelings of loyalty to the current Iranian government, a descendant of the revolution. [\(34\)](#)

The second prong of the test is whether the relatives in question are "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." (Directive, ¶ E2. A2. 1.3.1.) The federal statute, 50 U.S.C. § 1801(a), defines "foreign power" to include: a foreign government; a faction of a foreign nation; an entity openly acknowledged by a foreign government to be controlled by that foreign government; a group engaged in international terrorism; a foreign-based political organization; or an entity directed and controlled by a foreign government.

To determine whether Applicant was "in a position to be exploited by a foreign power," I have weighed Applicant's connection to his brother's family against his strong ties to the United States. I would note that Applicant's wife, children, and his mother are citizens and residents of the United States, and therefore entitled to the liberties and protection afforded U.S. citizens. His wife's mother and his brother and his family present a somewhat greater

vulnerability; although they have no connection to or dependence upon a foreign power, they are still under the physical control of the Iranian government. Applicant's record of successful employment in the U. S. and the confiscation of property and murder of his partner by the Iranian revolutionary government, make it unlikely that he would be vulnerable to improper influence, but the chances that the government of Iran might threaten or kill his brother and/or his family is possible. The fact that Applicant still retains his Iranian passport and will travel to Iran if his brother remains there makes the exploitation of his family even more likely.

However, as discussed above, in order to apply the second prong of Mitigating Condition 1, the Appeal Board requires that applicants affirmatively prove that there is no possibility that anyone would attempt to exploit a foreign relative in the future. Also, the Appeal Board prohibits any consideration of evidence that is not dispositive of the issue. Finally, the Appeal Board finds it irrelevant to this issue whether an applicant is likely to be improperly influenced by a foreign relative or associate. Applying that standard, Mitigating Condition 1 does not apply.

Under FI MC E2.A2.1.3.3. it may be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." The record is unclear as to the number of times per year he contacts his mother-in-law in Iran. He states he visits her if he travels to Iran. He has regular contact with his brother. These foreign contacts are deemed to be casual unless Applicant can show otherwise. Lacking the evidence, FI MC E2.A2.1.3.3. does not apply.

The "whole person" concept-not the potentially disqualifying or mitigating conditions-is the heart of the analysis of whether an applicant is eligible for a security clearance. (Directive, ¶ E2.2.3.) Indeed, the Appeal Board has repeatedly held that an administrative judge may find in favor of an applicant where no specific mitigating conditions apply.⁽³⁵⁾

In assessing whether an applicant is a security risk because of his or her relatives or associates in a foreign country, it is necessary to consider all relevant factors. As noted above, ¶¶ E2.2.1., E2.2.2., and E2.2.3. of the Directive specifically require each administrative judge to consider all the facts and circumstances, including the "whole person" concept, when evaluating each individual case. To ignore such evidence would establish a virtual per se rule against granting clearances to any person with ties to persons in a foreign country, contrary to the clear terms of the Directive. "Although the position of an applicant's foreign family members is significant and may preclude the favorable application of Foreign Influence Mitigating Condition E2.A2.1.3.1., the totality of an applicant's conduct and circumstances (including the realistic potential for exploitation) may still warrant a favorable application of the relevant general factors."⁽³⁶⁾

One of the "whole person" factors that must be considered is "the potential for pressure, coercion, exploitation, or duress." (Directive, ¶ E2.2.1.8.) In that regard, an important factor for consideration is the character of any foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. This factor is not determinative; it is merely one of many factors which must be considered. Of course, nothing in Guideline B suggests it is limited to countries that are hostile to the United States.⁽³⁷⁾ The Appeal Board repeatedly warns against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."⁽³⁸⁾ It is well understood that "[t]he United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."⁽³⁹⁾ Distinctions between friendly and unfriendly governments must be made with extreme caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Moreover, even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, friendly nations have engaged in espionage against the United States, especially in economic, scientific, military, and technical fields.⁽⁴⁰⁾ Nevertheless, the relationship between a foreign government and the U.S.

may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to against the U.S. through the applicant. The nature of the foreign government might also relate to the question of whether the foreign government or an entity it controls would risk jeopardizing its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray this country. A friendly relationship is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

The government of the Iran is controlled by the radical Islamic clerics. The State Department reports it has a poor record of protecting human rights. Iran has a history of poor relations with the U.S. because of Iran's efforts to acquire nuclear weapons and other weapons of mass destruction, its support for and involvement in international terrorism, and its violent opposition to the Middle East peace process. These factors are not determinative, but suggest it is more likely that Iran would attempt to exploit its residents or citizens to act adversely to the interests of the United States in the future. Applicant's family would be at substantial risk.

Most importantly, it is necessary to consider Applicant's vulnerability to exploitation through his relatives. Applicant is a mature individual with almost 20 years of successful employment in this country. He is a U.S. citizen, and has strong ties to the United States. Because of Applicant's deep and long-standing relationships and loyalties in the U.S., he can be expected to resolve any conflict of interest in favor of the United States. But he has close ties to his brother. If the government of Iran threatened to harm his brother or his family, the potential for pressure, coercion, exploitation, or duress would constitute a security risk. (Directive, ¶ E2.2.1.8.)

I considered carefully the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. I conclude Applicant has not mitigated any potential security concerns arising from his family ties to Iran.

Foreign Preference

The Government has established its case under Guideline C by showing that Applicant has exercised dual citizenship with Iran, by possessing and using an Iranian passport, and by his service in the Iranian army. Therefore, Foreign Preference Disqualifying Conditions (FP DC) E2.A3.1.2.1. (*The exercise of dual citizenship*), E2.A3.1.2.2. (*Possession and/or use of a foreign passport*), and E2.A3.1.2.3. (*Military service or a willingness to bear arms for a foreign country*) are applicable.

The DoD "Money Memorandum" ⁽⁴¹⁾ of August 16, 2000, clarifies DoD policy regarding the possession and/or use of foreign passports. It 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." Under the Money Memorandum, possession and/or use of a foreign passport is not mitigated by reasons of personal convenience, safety, requirements of foreign law, or the identity of the foreign country. He possesses an Iranian passport. Therefore, he cannot be granted a clearance under the Money Memorandum.

Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.2. (*Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship*) applies. His Iranian military service occurred nearly 20 years before he immigrated to the U.S. Therefore, SOR subparagraph 2.c. is mitigated. FP MC E2.A3.1.3.2. applies.

Although he expressed a willingness to renounce dual citizenship, keeping his passport precludes the application of Foreign Preference Mitigating Condition E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*) under the Money Memorandum.

His reason for retaining his Iranian passport is an expression of personal convenience, but this is not satisfactory as a mitigating factor. Applicant presents no other explanation or information that might be considered in mitigation. Accordingly, I find SOR subparagraphs 2.a., 2.b., and 2.d. against Applicant. Therefore, I find Guideline C against Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a. Against Applicant

Paragraph 2. Guideline C: AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

Subparagraph 2.b. Against Applicant

Subparagraph 2.c. For Applicant

Subparagraph 2.d. Against 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 Applicant's security clearance. Clearance is denied.

Christopher Graham
Administrative Judge

1. Tr. at 12, 17.

2. *Id.* at 13-14.

3. *Id.* at 23.

4. *Id.* at 12.

5. Government Exhibit 1 (Standard Form 86 (SF 86), *Security Clearance Application*, dated June 9, 2003) at 2.

6. *Id.*

7. *Id.* at 15; Government Exhibit 1, *supra*, note 5, at 4.

8. Response to the SOR, dated June 22, 2005, at 1.

9. Government Exhibit 2 (Applicant's Statement dated June 30, 2004) at 2.

10. Government Exhibit 1, *supra*, at 5.

11. Tr. at 15, 20-21.

12. *Id.*

13. *Id.*

14. *Id.* at 16.

15. *Id.* at 17.
16. *Id.* at 24.
17. Government Exhibit 2, *supra*, at 2.
18. *Id.* at 16.
19. *Id.*
20. *Id.* at 22.
21. *Id.*
22. United States Department of State, 2004 Human Rights Report, dated February 28, 2005, at 2-7.
23. *Id.* at 7.
24. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
25. *Id.* at 527.
26. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
27. *Egan, supra*, at 531.
28. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).
29. *See* ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
30. *Id.*, at 3.
31. *See Egan*; Directive ¶ E2.2.2.
32. ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).
33. ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004).
34. United States Department of State, *Background Note on Iran*, dated August 2005, at 3.
35. ISCR Case No. 03-11448 at 3-4 (App. Bd. Aug. 10, 2004); ISCR Case No. 02-09389 at 4 (App. Bd. Dec. 29, 2004).
36. ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (footnotes omitted); *accord* ISCR Case No. 03-23259 at 3 (App. Bd. May 10, 2006).
37. *See* ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).
38. ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).
39. ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).
40. ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).
41. Memorandum, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, subject "*Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline*," August 16, 2000. It is known as the 'Money Memorandum' because it was issued by Arthur L.

Money, Assistant Secretary of Defense. It is also known as the ASD C3I Memorandum.