

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant was born and raised in Iran. He came to the U.S. to attend college and earned two separate bachelor of science degrees. After completing his education, he chose to remain in the U.S. His second and current wife is an Iranian born national he met on a return visit to Iran. He is employed as a software quality engineer for a defense contractor and seeks to renew his security clearance. His parents, and 11 younger siblings are resident citizens of Iran. He successfully mitigated foreign preference concerns as a result of surrendering his Iranian passport and renouncing is Iranian citizenship, but was unable to mitigate foreign influence concerns for immediate family members in Iran. Clearance is denied.

CASENO: 04-10186.h1

DATE: 05/31/2006

DATE: May 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10186

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Laura Anderson, Esq.

SYNOPSIS

Applicant was born and raised in Iran. He came to the U.S. to attend college and earned two separate bachelor of science degrees. After completing his education, he chose to remain in the U.S. His second and current wife is an Iranian born national he met on a return visit to Iran. He is employed as a software quality engineer for a defense contractor and seeks to renew his security clearance. His parents, and 11 younger siblings are resident citizens of Iran. He successfully mitigated foreign preference concerns as a result of surrendering his Iranian passport and renouncing is Iranian citizenship, but was unable to mitigate foreign influence concerns for immediate family members in Iran. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 22, 2005, DOHA issued a Statement of Reasons (SOR) ⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on July 11, 2005, and submitted an Amended Answer to SOR on October 24, 2005. He elected to have a hearing before an administrative judge. DOHA received the case on August 10, 2005, and it was assigned to me the same day. On October 11, 2005, DOHA issued a notice of hearing scheduling the case to be heard on October 26, 2005. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, the Government presented five exhibits, which were marked as Government Exhibits (GE) 1 through 5. Counsel for Applicant did not object to GE 1, 2, and 5. However, she did object to GE 3 and 4 on the basis of relevancy. After argument by both parties, I overruled Applicant's objection. GE 1 through 5 were admitted. Tr. 18-21. Applicant presented three exhibits, which were marked as Applicant Exhibits (AE) A through C, without objection.

DOHA received the transcript (Tr.) of the proceeding on November 9, 2005. At the conclusion of the hearing, Applicant requested the record be held open to submit additional material. I granted Applicant's request and held the record open until November 16, 2005, and gave Department Counsel until November 23, 2005 to submit rebuttal comments. On November 22, 2005, Applicant requested an extension, which was unopposed by Department Counsel. For good cause, I granted Applicant's request for an extension until December 23, 2005, and gave Department Counsel until January 6, 2006 to submit rebuttal comments. Applicant timely submitted three additional documents to include Counsel for Applicant's cover letter dated December 9, 2005, Certificate of Naturalization for Applicant's wife, and Applicant's Post-

Hearing Brief, which were admitted without objection and marked AE D through F, respectively.

FINDINGS OF FACT

In his Amended Answer, Applicant admitted in part several of the SOR allegations. His admissions are incorporated into my findings, and after a thorough review of the record, I make the following findings of fact:

Applicant is a 53-year-old married man employed as a software quality engineer for a defense contractor. He has been with his current employer since July 1989. Applicant seeks to renew his security clearance, which he has held since January 1991.

Applicant was born and raised in Iran and is the oldest of 12 children. He served approximately two years of mandatory military service under the Shah of Iran. Tr. 26. In 1976 at age 24, Applicant came to the U.S. to attend college on a student visa. In 1982, Applicant was awarded his first bachelor of science degree, majoring in aerospace science. After graduating from college, Applicant "worked for a while" and went to Iran for his first of three visits to see his family. Tr. 29. In 1989, Applicant was awarded his second bachelor of science degree in electronic engineering technology. Applicant supported himself while going through college.

From November 1979 to August 1982, Applicant was married to his first wife, a U.S. born citizen. That marriage ended in divorce. In March 1993, Applicant married his second and current wife, who was a native-born Iranian citizen. He met her on his second of three visits to Iran. Tr. 54. Applicant and his wife have two U.S. born children, ages eight and four. Applicant became a U.S. citizen in June 1989 and his wife became a U.S. citizen in April 2003. AE E. Applicant was issued a U.S. passport in January 1999.

At the time the SOR was issued, Applicant possessed an Iranian passport issued to him in January 1997 due to expire in January 2007. To comply with the DoD policy prohibiting possession of a foreign passport while holding a security clearance unless sanctioned by the U.S. government, ⁽²⁾ Applicant surrendered his Iranian passport and renounced his Iranian citizenship to the Embassy of Pakistan, Interests Section of the Islamic Republic of Iran, Washington, DC, in September 2005. AE A through C. Applicant did admit to possessing an Iranian passport, but denied using it instead of his U.S. passport on his 2001 visit to Iran in his Amended Answer to SOR. He stated he maintained an Iranian passport "to be able to travel to Iran to visit my family, and also to prove to Iranian government that I am the father of my children so they can travel to Iran to visit our family." GE 2. However, Counsel for Applicant's Post-Hearing Brief stated Applicant used **both** (emphasis added) his Iranian and U.S. passports on his visits to Iran and did so as a matter of "convenience and safety." AE F.

Applicant's mother, father, five brothers, and six sisters are resident citizens of Iran. His father-in-law, mother-in-law, and brother-in-law are resident citizens of Iran. In Applicant's initial Answer to the SOR, he admitted two of his sisters were school teachers, whose salary was paid by the Iranian government. In his Amended Answer to the SOR, he corrected his response to say that he was "told" he had one brother and sister, who are school teachers paid by the Iranian government, but had no "direct knowledge of their professions today."

In a signed, sworn statement submitted to the Defense Security Service (DSS) in February 2004, Applicant stated, "I provide approximately \$1,000 to \$1,500 financial support to my mother each year." GE 2. That support to his mother in Iran was alleged in his SOR, and later denied by him in his Amended Answer to SOR. He explained at hearing that he does not send his mother a monthly stipend and added when he was in Iran in 2001, he had close to \$1,000.00 to \$1,500.00 on his person and gave the money to his mother before he left Iran. Tr. 37, 49.

Applicant testified he places telephone calls to his parents every one-to-two months lasting in duration of approximately five-to-ten minutes. The nature of these calls to his parents are to check on their well being. If his siblings happen to be present, he exchanges brief pleasantries with them. Tr. 37-38, 40. Applicant's parents are in their 70s. Tr. 39. Applicant does not maintain close contact with his siblings. One of his sister's lives close to his parents and he periodically telephones her to check on his parent's well being. Tr. 39. He does not maintain any other contact with his siblings other than that described above. Adding to time and distance, there exists a significant age gap between Applicant and most of his 11 siblings in Iran. Tr. 40-41.

Since Applicant first came to the U.S. in 1976, he has returned to Iran to visit his family three times in 1984, 1991, and 2001. Tr. 42. It was during his second visit that he met his second and current wife. Applicant testified that he had no current plans to visit family in Iran, but in his security clearance application submitted in February 2003, he stated "As long as my parents are alive, I will travel to Iran to visit them. It is safer to travel to Iran with Iranian passport than American passport." Tr. 49-50, GE 1. Applicant's parents visited him in the U.S. in 1997. GE 2. Applicant also traveled to Saudi Arabia for the purpose of visiting his father in 1999. GE 2. Applicant's mother visited him in the U.S. in "1999 or 2000." GE 2.

Neither Applicant's parents nor his mother and father-in-law are connected with the Iranian government. His father was "in the Persian rug business" and his mother was a housewife. Tr. 55. None of Applicant's 11 brothers or sisters have visited him in the U.S. His brother-in-law and his wife visited Applicant and his wife in the U.S. in 2000, and to the "best of [his] knowledge" are not connected with the Iranian government. GE 2.

Applicant has no assets in Iran. He and his wife own a home in the U.S., which he estimates is worth \$280,000.00. Applicant and his wife exercise their right to vote in the U.S., pay taxes, and exercise all rights and privileges of being U.S. citizens. Tr. 56. He testified he does not participate in any Iranian cultural events, clubs, or associations. Tr. 45. He further testified he would promptly report any contacts of any kind from a foreign government to the proper authority.

Tr.45, 50-51. He testified credibly of his loyalty to the U.S. and how proud he was to be involved in the type of work he does as a defense contractor. Tr. 46.

Applicant enjoys an excellent work reputation and is considered to be a trusted and valued employee as evidenced by a letter of recommendation submitted by a company program manager and the testimony of two company supervisors. AE C, Tr. 59-75, 78-85.

Department Counsel introduced evidence that indicates Iran is an active sponsor of terrorism, has a poor record on human rights, and has unscrupulously used its own citizens to achieve its ends. GE 3 and 4.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." *Id.* at 527. 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 for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline C-Foreign Preference

In the SOR, DOHA alleged Applicant exercised dual citizenship with Iran and the U.S. (¶ 1.a.); that he possessed a valid Iranian passport (¶ 1.b.); and that he used his Iranian passport **instead** (emphasis added) of his U.S. passport on a visit to Iran in 2002 (¶ 1.c.). A security concern may exist 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. Directive E2.A3.1.1.

At the time Applicant's SOR was issued, these allegations were accurate and established by the government. However, since the SOR was issued, Applicant has surrendered his Iranian passport and renounced his Iranian citizenship. As such, Applicant is in full compliance with the "Money Memorandum." See fn 2. No evidence exists suggesting Applicant had knowledge of the Money Memorandum's prohibitions against the possession or use of a foreign passport while he held a security clearance.

These facts give rise to Foreign Preference Disqualifying Conditions (FP DC) 1: *The exercise of dual citizenship*; and FP DC 2: *Possession and/or use of a foreign passport*. Applicable is Foreign Preference Mitigating Conditions (FP MC) 1: *Dual citizenship is based solely on parents' citizenship or birth in a foreign country*; and FP MC 4: *Individual has expressed a willingness to renounce dual citizenship*; and full compliance with the Money Memorandum as a result of Applicant surrendering his Iranian passport and renouncing his Iranian citizenship. In light of Applicant's actions in this regard, I find for him on this concern.

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's parents, and 11 younger siblings are resident citizens of Iran (¶ 1.a); that two of his sisters are school teachers whose salaries are paid by the Iranian government (¶ 2.b), that his father-in-law, mother-in-law, and brother-in-law are resident citizens of Iran (¶ 2.c.); that he sends approximately \$1,000.00 to \$1,500.00 yearly to his mother in Iran (¶ 2.d.); and that he traveled to Iran in 2001 and used his Iranian passport (¶ 2.e.). 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 United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The Government established by substantial evidence and Applicant's admissions the allegations in the SOR that Applicant has immediate family members who are resident citizens of a foreign country. While the:

mere possession of family ties with persons in a foreign country is not, as a matter of law,

automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb 8, 2001). The government also established by substantial evidence the remaining allegations in the SOR under this concern. These facts give rise to Foreign Influence Disqualifying Condition (FI DC) 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; FI DC 3: Relatives, cohabitants, or associates who are connected with any foreign government.

Applicant's Amended Answer to SOR clarified his initial response that indicated he has two sisters, who are school teachers and paid by the Iranian government. His Amended Answer states he had been "told" he has one sister and one brother, who are school teachers whose salaries are paid by the Iranian government. He added he had no direct knowledge of their professions today.

Security clearance decisions are not an exact science. Instead, they are predictive judgments about an Applicant's security suitability in light of that person's past conduct and *present circumstances*. *Egan*, 484 U.S. at 528-29. The evidence established that Applicant is a loyal United States citizen. At the same time, the evidence established Applicant has strong ties of affection or obligation to immediate family members, especially his parents, who are resident citizens of Iran. Although these family members do not appear to be foreign associates or agents of a foreign power, Applicant failed to demonstrate they are not *in a position of vulnerability* such that he could be forced to choose between loyalty to the United States and loyalty to them.

In particular, Applicant has an ongoing relationship with his parents. In 2003, he stated in his security clearance application that as long as his parents were alive, he would continue to see them. He has returned to Iran three times to visit his family and went to Saudi Arabia to meet his father one time since he came to the U.S., admitting he used his Iranian passport during his 2001 visit. The record supports the notion Applicant remains in regular contact with his parents by telephone. He also maintains the telephone number of a sister who lives nearby them to contact her, should he need to.

The fact that Applicant is concerned about the well being of his parents does not reflect poorly on him, but rather the contrary. It shows that he is an individual of character and has a sense of family values. Suffice it to say, the evidence supports the notion Applicant has a sense of obligation and loyalty to his parents. It is that sense of obligation and loyalty that may make him vulnerable. The evidence does not support the notion this sense of obligation and loyalty extends to his younger siblings and his in-laws. In the case of his parents, this loyalty would not be unusual for the oldest son and child. Time, distance, and the fact Applicant was in the U.S. while his younger 11 siblings grew up had its way of diminishing bonds of family familiarity.

While the record suggests that Applicant is a hard working, productive, and loyal U.S. citizen, there remains the lingering concern of his having immediate family, especially his parents, in Iran during these troubled times. ⁽³⁾

With the exception of Applicant's brother and sister, who are school teachers in Iran, none of his other family members appear to be connected with the Iranian government in any way. I view his brother's and sister's connection with the Iranian government as minimal and am able to apply Foreign Influence Mitigating Condition (FI MC) 1: *A*

determination that the immediate family member(s), (. . . father, mother, . . . brothers, sisters) , . . . 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. In the case of Applicant's limited contact with his younger 11 siblings and in-laws, I am able to apply FI MC 3: Contact and correspondence with foreign citizens are casual and infrequent.

I find Applicant's clarification and explanation at hearing of his one-time gift of money to his mother credible and accordingly find for him on this SOR allegation. His giving her \$1,000.00 to \$1,500.00 in 2001 as he was leaving Iran does, however, show another dimension of his loyalty and affection to his parents. Despite the application of FI MCs 1 and 3, they are not sufficient to outweigh the continuing and overriding concern of FI DC 1, especially it applies to Applicant's parents. Accordingly, I find against Applicant on this concern except for ¶¶ 2.b., 2.c. and 2.d.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

DECISION

In light of all of 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. Clearance is denied.

Robert J. Tuider

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
2. Assistant Secretary of Defense Memorandum, dated August 16, 2000, for Secretaries Of The Military Departments, et al, SUBJECT: Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Guideline, commonly known as the "Money Memorandum" states in part the possession or use of a foreign passport may be a disqualifying condition unless sanctioned by the U.S. government. The Memorandum further stated that any clearance be denied or revoked unless the applicant surrenders the foreign passport. GE 5.
3. *See* U.S. Department of State, Bureau of Consular Affairs, Consular Information Sheet, on Iran, dated August 8, 2005, U.S. Department of State Background Note: Iran, dated August 2004. GE 3 and 4.