

DATE: December 21, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-11463

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jeff A. Nagel, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Applicant has repeatedly stated he is willing to renounce his Iranian citizenship, and thinks he has done so. He has surrendered his Iranian passport 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). The Applicant's father is a citizen of and resides in Iran. He is 72, and retired from private enterprise. The Applicant's mother is a dual national who resides in both the U.S. and Iran. His two brothers are citizens of and reside in Iran. One works for the airline industry, and the other is in retail. None of the Applicant's relatives are connected with any foreign government, or the subject of possible coercion vis-a-vis the Applicant. Mitigation is shown. Clearance is granted.

### **STATEMENT OF THE CASE**

On July 12, 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, 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.

Applicant filed an Answer to the SOR on August 5, 2005.

The case was received by the undersigned on September 19, 2005. A notice of hearing was issued on September 26, 2005, and the case was heard on October 5, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on October 19, 2005. The issues raised here are whether the Applicant's perceived Foreign Preference and Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations, except for subparagraph 2.a., he denies he is a dual national who exercises dual citizenship.]

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 43 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### Guideline B - Foreign Influence

1.a. The Applicant's father is a citizen of and resides in Iran (TR at page 17 lines 5~6, at page 18 lines 3~6, and at page 30 line 14 to page 31 line 10). He is 72, retired from private enterprise, as an automobile manufacturer, and suffers Alzheimer's Disease (*Id*, and TR at page 32 line 21 to page 33 line 24). The Applicant's mother is a dual national of the U.S. and Iran (TR at page 32 line 21 to page 33 line 24). She resides in both countries, part of the year. She lives with the Applicant when in the U.S., and cares for the Applicant's father when in Iran (*Id*)

1.b. The Applicant's two brothers are citizens of and reside in Iran (TR at page 17 lines 1~3). His younger brother, who has a green card and has lived in the U.S., works for the airline industry (TR at page 18 line 18 to page 19 line 6, at page 19 line 20 to page 20 line 19 and at page 34 line 20 to page 36 line 3). The Applicant's older brother has a retail store and runs a private taxi service (TR at page 36 line 4 to page 37 line 5).

### Guideline C - Foreign Preference

2.a.~2.c. The Applicant came to the U.S. as a teenager in 1976, and attended both high school and college in America (TR at page 16 lines 15~21, at page 19 lines 10~19, and at page 21 line 4 to page 24 line 13). He became a U.S. citizen in 1987, is married to a native born American, however, he obtained an Iranian passport in 1996 in order to visit his parents (TR at page 24 line 14 to page 27 line 3, and at page 28 line 3 to page 29 line 17). The Applicant has repeatedly stated he is willing to renounce his Iranian citizenship, and thinks he has done so (TR at page 25 line 22 to page 26 line 5, and at page 41 lines 3~6). He has also surrendered his Iranian passport in Compliance with the *Money Memorandum* (TR at page 27 line 4 to page 28 line 2, and Applicant's Exhibits (AppXs) A and C).

### Mitigation

The Applicant's manager and a colleague think most highly of the Applicant (AppX B).

## **POLICIES**

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, 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.

The Government must make out a case under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an 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 disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has demonstrated a Foreign Preference or who is subject to a Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. 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

The Applicant was a dual national with Iran, and until recently maintained an Iranian passport. The first and second disqualifying conditions under Foreign Preference are therefore applicable as there was an "exercise of dual citizenship," with the "possession . . . of a foreign passport." This has been countered, however, by his compliance with both the last mitigating condition, with his unqualified "willingness to renounce" his Iranian citizenship, which he thinks he has already done; and by his compliance with the *Money Memorandum*, when he surrendered his Iranian passport. Mitigation is shown. Guideline C is found for the Applicant.

The Applicant's mother is a dual national, and his father and two brothers are citizens of and reside in Iran. The first disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of, or resident or present in, a foreign country." However, the Applicant's relatives are not connected with any government, and there is no evidence that their presence in Iran can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation (TR at page 38 line 9 to page 39 line 7). The first mitigating condition is therefore applicable as "the immediate family members . . . 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 persons involved and the United States." Mitigation is again shown. Guideline B is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged Foreign Preference and Foreign Influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C

## FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

**DECISION**

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

Richard A. Cefola

Administrative Judge