

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a 49-year-old naturalized United States citizen, who has resided in the United States since leaving Iran in 1975. His sisters, mother and children are citizens and residents of the United States. His second wife, born in Iran, is a permanent resident alien of the United States, awaiting citizenship. Her parents are resident citizens of Iran. In 1997, 1998, 2002 and 2004, he traveled to Iran on an Iranian passport, which he subsequently returned to the Iranian embassy along with a letter renouncing his citizenship. He mitigated the security concerns raised by foreign preference and foreign influence. Clearance is granted.

CASENO: 04-11577.h1

DATE: 05/12/2006

DATE: May 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11577

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Michael P. Heiskell, Esq.

SYNOPSIS

Applicant is a 49-year-old naturalized United States citizen, who has resided in the United States since leaving Iran in 1975. His sisters, mother and children are citizens and residents of the United States. His second wife, born in Iran, is a permanent resident alien of the United States, awaiting citizenship. Her parents are resident citizens of Iran. In 1997, 1998, 2002 and 2004, he traveled to Iran on an Iranian passport, which he subsequently returned to the Iranian embassy along with a letter renouncing his citizenship. He mitigated the security concerns raised by foreign preference and foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On June 10, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guidelines C (Foreign Preference) and B (Foreign Influence) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On June 22, 2005, Applicant filed an Answer to the SOR and requested a hearing. The case was assigned to another administrative judge on November 1, 2005, and reassigned to me on November 28, 2005. A Notice of Hearing was issued on January 31, 2006, scheduling the case for hearing on March 2, 2006. At the hearing the Government entered exhibits (GX) 1-9 into evidence. Applicant introduced exhibits (AX) 1-37 into evidence. He testified in his case in chief and called five witnesses. On March 10, 2006, DOHA received the hearing transcript (Tr.).

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR and at the hearing, I make the following findings of fact:

Applicant is 49 years old. He was born in Iran in 1956, and came to the United States to attend college in 1975. Prior to enrolling in college here, the Iranian government gave him a small educational stipend in anticipation of his return home upon completion of his studies.⁽¹⁾ Instead, after finishing his undergraduate degree in 1979, he decided to stay in the United States and pursue graduate school. In 1982, he completed a Master of Science in Structural Engineering. More recently, he received a Ph.D. in Mechanical Engineering in May 2005.

In 1986, Applicant became a naturalized citizen.⁽²⁾ Since 1987, he has worked as an engineer for a federal contractor and has held a secret security clearance for the last 20 years. This is the third time he has gone through the security clearance process. He applied for his initial security clearance in the 1980's, filed his first renewal application in November 1991, and the pending renewal application in June 2004.⁽³⁾ Since holding his security clearance, there is no evidence that he violated security regulations.

Applicant was married to his first wife, an American citizen, from 1981 until 1998. They did not have any children.⁽⁴⁾ He married his second wife in 1999. She was born in Iran, but is a permanent resident alien of the United States and applied for citizenship in 2002. At this time she is waiting to take the oath of citizenship. They have two children who were born in the United States. He and his family reside in their home in the United States.⁽⁵⁾

Applicant's parents were born in Iran. They came to the United States in 1983. His mother is a naturalized United States citizen and resident. His father died in 2006, before becoming a citizen.⁽⁶⁾ His grandmother, who died in 2004, was an Iranian citizen and resident.

Applicant is one of three children, all born in Iran. Both of his sisters are citizens and residents of the United States, as are their husbands and children. One of them arrived here in 1979, and the other came with his parents in 1983.⁽⁷⁾ Neither he nor his immediate family members own property in Iran.⁽⁸⁾ He has no financial ties to Iran.

Applicant's mother-in-law, age 64, and father-in-law, age 67, are citizens and residents of Iran. His father-in-law is a lawyer and his mother-in-law is a housewife. They own an apartment and farm in Iran.⁽⁹⁾ They are not employed by the Iranian government and have not been monitored by it.⁽¹⁰⁾ Applicant's wife telephones her parents weekly and sometimes he speaks to them if he is at home.⁽¹¹⁾

In 1997, Applicant applied for an Iranian passport in order to visit his sick, elderly grandmother. Prior to doing so, he spoke to his security officer, who indicated that obtaining the passport would not create a problem for him.⁽¹²⁾ He subsequently traveled to Iran in 1997 and in 1998, using that passport. Before he left for those visits, he notified his employer of his travel plans.⁽¹³⁾ In 1998, he visited his grandmother and his current spouse.⁽¹⁴⁾ In October 2002, he renewed the passport and traveled there with his wife to visit his 96-year-old grandmother and in-laws. In 2004, he and his wife again visited his grandmother and in-laws.⁽¹⁵⁾ During his initial visit in 1997, he used his Iranian passport to obtain a visa for Germany, in order to leave Iran because he was concerned that the Iranian government could confiscate his American passport and detain him.⁽¹⁶⁾

In a statement made to a government investigator in June 2004, he indicated that he was willing to relinquish the passport on request.⁽¹⁷⁾ He stated, "I proudly renounce my Iranian Citizenship and indicate that I will defend the United States Constitution and support the U.S. and it's laws. It is my honor to be a U.S. Citizen, and I consider the U.S. my home. That is why I have my home and family here."⁽¹⁸⁾

Five witnesses testified in support of Applicant's request for a security clearance. A college friend and colleague for 25 years does not consider him a national threat.⁽¹⁹⁾ His former supervisor (now retired) said, "I have known him for 20 years, and all of the time, he has been just stellar."⁽²⁰⁾ He does not believe Applicant would pose a security threat. Another coworker, who has known Applicant more than 24 years, stated that "Since working with [Applicant], I've never witnessed or seen any thing where I felt like he was - would violate any security requirements or anything that I'm aware of since I've worked with him."⁽²¹⁾ A colleague and personal friend for more than 15 years believes Applicant should maintain his security clearance.⁽²²⁾ Another colleague, who is a retired lieutenant colonel, stated that "in the ten years that I've worked with [Applicant], I've known him to be very conscientious, loyal . . . I'd say [a] patriotic individual . . . To me, he truly models what we like to see in our employees and what I really feel we'd like to see in our citizens."⁽²³⁾ Four of these witnesses hold (or have held) security clearances.

Applicant presented numerous achievement awards related to his work, certificates of recognition, excellent performance reviews from his employer, and letters of appreciation for his support and work in community projects, which span the last 16 years.

Applicant first learned that possessing an Iranian passport created a security clearance risk on or about June 10, 2005

when he received the SOR. On June 22, 2005, he renounced his Iranian citizenship and returned his passport to the Iranian Embassy in Washington, D.C., as evidenced by documentation that his renunciation letter and passport were received at the Embassy on July 7, 2005. ⁽²⁴⁾ He stated he would have submitted it sooner, if he had known or been informed by his employer or the Government that it created a security clearance problem. He has no intention of returning to Iran, nor does his wife. ⁽²⁵⁾

Since the 1979 revolution, Iran and the United States have been adversaries. Impediments to improved relations with Iran include Iranian efforts to acquire nuclear weapons and other weapons of mass destruction; its support for and involvement in international terrorism; its support for violent opposition to the Middle East peace process; and its dismal human rights record. ⁽²⁶⁾

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established

by the Department of Defense for issuing a clearance.

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. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

CONCLUSIONS

After considering all of the facts in evidence and legal standards, including the "whole person" concept discussed above, I conclude the following regarding the allegations in the SOR:

Guideline C - Foreign Preference

In the SOR, DOHA alleged Applicant exercised dual citizenship with Iran and the United States (¶ 1.a); possessed an Iranian passport issued in September 1997 and renewed in October 2002 that would expire in September 2007 (¶ 1.b); applied for the passport after becoming a United States citizen (¶ 1.c); used the passport to enter Iran in 1997, 1998, 2002 and 2004 (¶ 1.d); and, used the passport to obtain a German visa in 1998 (¶ 1.e). Applicant admitted these allegations. When an applicant 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 decision that are harmful to the interests of the United States. Directive ¶E2.A3.1.1.

The Department of Defense must deny or revoke the security clearance of any applicant who fails to surrender his foreign passport unless he obtains official approval for its use from the appropriate agency of the United States Government. Memo. From Arthur L. Money, Asst. Sec. Def. Command, Control, Communications, and Intelligence, to

Directors of Defense Agencies, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline* (Aug. 16, 2000).

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1 (*The exercise of dual citizenship*), and FP DC E2.A3.1.2.2 (*Possession and/or use of a foreign passport*). Applicant exercised dual citizenship by possessing and using a foreign passport. Furthermore, the Money Memo makes clear, Guideline C's prohibition on the possession or use of a foreign passport is only mitigated by the approval of such possession or use by the U.S. Government. It contains no mitigating condition related to an applicant's "personal convenience, safety, requirements of foreign law, of the identity of the foreign country." There is no evidence the U.S. Government approved Applicant's possession and use of the Iranian passport.

If the applicant surrenders a foreign passport, the Judge still must consider not only the bare fact of surrender, but also the overall facts and circumstances surrounding the applicant's possession, use, and surrender of the foreign passport. ISCR Case No. 01-22606 at 8 (App. Bd. Jun. 30, 2003).

After considering all of the circumstances of this case, I find for Applicant. I am convinced he obtained the passport for the sole purpose of visiting his sick grandmother and later his in-laws, and not out of a sense of loyalty or connection to Iran. I also believe that had he known of the problems that a foreign passport could create, he would not have obtained one in 1997, or traveled to Iran. He has since surrendered the passport to the appropriate authorities, formally renounced his Iranian citizenship, does not consider himself Iranian, and does not intend to return to Iran in the future. Hence, Foreign Preference Mitigating Condition (FP MC) E2.A.3.1.3.4 (*Individual has expressed a willingness to renounce dual citizenship*) applies and mitigates the allegations contained in SOR ¶¶ 1.a through 1.e. Accordingly, the security concerns based on foreign preference are decided in his favor.

Guideline B - Foreign Influence

In the SOR, DOHA alleged Applicant's spouse is a citizen of Iran, residing in the United States (¶ 2.a); his mother-in-law and father-in-law are resident citizens of Iran (¶ 2.c); and Applicant traveled to Iran in 1997, 1998, 2002 and 2004 (¶ 2.e).⁽²⁷⁾ Applicant admitted these allegations. A security concern may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she maybe bound by affection, influence, or obligations 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's evidence and Applicant's admissions constitute substantial evidence of

a potentially disqualifying condition under 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 or, or resident or present in, a foreign country*). Applicant's wife is a citizen of Iran, but a permanent resident alien of the United States. His in-laws, to whom he has close of affection or obligation are resident citizens of Iran, fall within this

condition as "[t]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at 8 (App. Bd. Feb. 20, 2002).

While family ties with persons in a foreign country are not, as a matter of law, *per se* disqualifying under Guideline B, such ties raise a *prima facie* security concern. This concern is 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. ISCR Case No. 99-0424, 2001 DOHA LEXIS at **33-34 (App. Bd. Feb. 8, 2001).

As the evidence established a potential disqualifying condition, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. The security concerns raised by Applicant's foreign in-laws may be mitigated under Foreign Influence Mitigating Condition (FI MC) E2.A1.1.3.5 (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*). Neither Applicant nor any member of his immediate family has financial obligations or ties to Iran. His financial interests and property are located in the United States.

The remaining mitigating conditions under this guideline do not apply based on the facts and circumstances. However, the analysis for security clearance eligibility is not exclusively determined by the application of the articulated mitigating conditions, but also encompasses information about a person's past and present and factors construed to fall within the purview of the "whole person" concept. In this case, I have considered several of those factors and have given them substantial weight.

First, Applicant's family ties to Iran are minimal, consisting solely of his mother-in-law and father-in-law, neither of whom are connected to nor employed by the government. All of his immediate family members are citizens and residents of the United States and have been since 1983. Although he visited his in-laws in the last several years, he has no intention of returning to Iran in the future. The only other contact he has with them is an occasional telephone conversation when they speak to his wife. Neither he nor his wife intend to return to Iran for a visit.

Second, Applicant has held a security clearance since the middle 1980's, and has gone through at least one renewal period in 1991, prior to this renewal application process. There is nothing in the record to indicate that he has compromised classified information or has had his clearance revoked over the course of those years.

Third, Applicant presented five character witnesses, four of whom have worked closely with Applicant and have held security clearances for many years. Based on their credible testimony and observation of him for more than twenty years, coupled with the numerous exhibits related to his commendable employment record, he does not pose a security risk or exhibit an allegiance to any country other than the United States.

Fourth, Applicant has lived in the United States since 1975, and has significant ties to it. He attended undergraduate and graduate school here, and most recently received his Ph.D. from a major university. He has developed and maintained friendships both personally and professionally over the course of 30 years. His family lives here, including his children who were born here. He owns property and participates in various civic organizations and activities. He is proud to be an American citizen, and has adopted the American lifestyle and culture since arriving here at the age of 17.

Determining suitability for a security clearance requires a predictive judgment-it is an attempt to determine who might pose a security risk at some future time. Although the risk of undue foreign influence cannot be completely ruled out as long as Applicant's in-laws retain their connection to Iran, Applicant's substantial ties to the United States lead me to conclude that he can be trusted to place his obligation to this government ahead of any sense of obligation to his wife's parents residing in Iran. Moreover, the best predictor of future performance is past performance. Applicant has demonstrated a track record of protecting our nation's secrets, having held a security clearance for twenty years without any adverse incidents, during which time his deceased grandmother lived in Iran. He has also demonstrated a deep and longstanding relationship, connection, and loyalty to the United States that can be expected to resolve any conflict of interest in favor of the United States' interest. (28)

Hence, I find Applicant mitigated the security concerns raised by his wife who is a permanent resident alien of the United States, awaiting American citizenship, his mother-in-law and father-in-law who are residents citizens of Iran, and his travel there, as alleged in SOR ¶¶ 2.a, 2.c, and 2.e. The allegations contained in ¶¶ 2.b and 2.c are also found in his favor, as his grandmother and father are deceased. Accordingly, Guideline B is decided for Applicant.

For the reasons stated, I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline C (Foreign Preference) FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Paragraph 2: Guideline B (Foreign Influence) AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

DECISION

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

Shari Dam

Administrative Judge

1. Tr. 73.
2. Tr. 30.
3. Tr. 73-74.
4. Tr. 26.
5. Tr. 42-44.
6. Tr. 28.
7. Tr. 29.
8. Tr. 66.
9. Tr. 66.
10. Tr. 69.
11. Tr. 66.
12. Tr. 35.
13. GX 4.
14. GX 2 at 5.
15. Tr. 71.
16. Tr. 36.
17. GX 2 at 8.
18. *Id.* at 11.
19. Tr. 81.
20. Tr. 87.
21. Tr. 91.
22. Tr. 97.
23. Tr. 102.
24. AX 23.
25. Tr. 67.
26. GX 7.
27. The SOR also alleged that Applicant's father was a citizen of Iran, residing in the United States (¶ 2.b), and his grandmother was a resident citizen of Iran (¶ 2.d). As of the hearing, both are deceased and no longer serve as a basis

for disqualification under this guideline.

28. Note: Under the Revised Adjudicative Guidelines, Promulgated on December 29, 2005, but not yet implemented, this conclusion falls within mitigating condition 8(b) of Guideline B.