

DATE: December 9, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-12932

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a dual citizen of the United States and Iran, has failed to fulfill the requirements of the Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence, dated August 16, 2000, (Money Memorandum) by maintaining a current Iranian passport rather than relinquishing it to the proper Iranian authorities. Applicant's immediate family members, including his mother and father, with whom he has close and continuing contact, and eight siblings or half-siblings, are citizens and residents of Iran. The evidence establishes that Applicant is vulnerable to foreign influence. Mitigation has not been shown. Clearance is denied.

**STATEMENT OF THE CASE**

On March 10, 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 Applicant which detailed 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be granted, continued, denied, or revoked.

The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and citizenship of close family members and Foreign Preference (Guideline C) related to his exercise of dual citizenship with the United States and Iran by his retention and use of a foreign passport after he became a United States citizen.

Applicant, acting *pro se*, filed a notarized response dated April 10, 2005, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

On May 25, 2005, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on August 22, 2005, and the hearing was held on August 29, 2005.

At the hearing, Department Counsel offered 10 documentary exhibits (Exhibits 1 through 10) and no witnesses were called. Applicant offered two documentary exhibits (Exhibits A and B) and offered his testimony. The transcript (Tr) was received on September 14, 2005.

### **FINDINGS OF FACT**

The SOR contains six allegations, 1.a. through 1.f., under Guideline B and two allegations, 2.a., and 2.b., under Guideline C. Applicant admitted all of the SOR allegations, except 2.b. The admissions are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is a 50 year old employee of a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. He is married and has three children. He received BA, MA and Ph.D. degrees in mathematics from United States universities.

Applicant was born in Iran in 1955 and immigrated to the United States in 1974. He became a naturalized United States citizen in 1989.

#### **Paragraph 1 (Guideline B - Foreign Influence)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

Applicant's mother and father are citizens and residents of Iran. He is close to them and usually speaks to them by telephone once a month. However, during the last few months, because his mother is ill, he calls them on a weekly basis.

Applicant has eight siblings, including half-sisters, five of whom are citizens and residents of Iran. Two of his brothers and one sister live in the United States, but they, like Applicant, are dual citizens of Iran and the United States. All of his siblings, who live in the United States, go back and forth to Iran (Tr at 54-57).

Applicant's father owns a business and some property in Iran, which Applicant may be in line to inherit with his siblings, although the status of this property is not clear at this point (Tr at 38- 40).

#### **Paragraph 2 (Guideline C - Foreign Preference)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has acted in such a way as to indicate a preference for another country over the United States.

Applicant currently has an non-expired Iranian passport. His Iranian passport had expired in 2001, but he subsequently renewed it in 2003 and it is current until 2006. He has traveled to Iran to visit his family in the years 1997, 2000, and 2003, and he used his Iranian passport on all of these trips. Each of these trips was after he became a United States citizen. He testified that since he did not believe that he could travel to Iran with a United States passport, he will continue to maintain his Iranian passport, as he plans to travel to Iran and use his Iranian passport in the future (Tr at 41, 53-54).

Applicant testified that he does not consider himself a citizen of Iran, but he conceded that he retained and used his Iranian passport because Iran considered him an Iranian citizen. He has never made an attempt to renounce his Iranian citizenship (Tr at 50-51).

### **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2.

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### **Burden of Proof**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern 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 criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Enclosure 2 to the Directive, Section E2.2.2.

### **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines B and C:

#### **(Guideline B - Foreign Influence)**

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Based on the evidence of record, the Government has established a reason to deny Applicant a security clearance because of Foreign Influence concerns. As Applicant's mother and father, with whom he has a close

personal relationship, and many siblings and half-siblings are citizens of Iran, a country which is undisputedly hostile to the Government of the United States, Applicant has a very heavy burden of showing that this family members do not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002). Applicant has not met this substantial burden.

Based on the current status of Iran, the close ties that Applicant has, primarily with his parents, the existence of immediate family members, who are citizens and residents of Iran, creates the potential for foreign influence that could result in the compromise of classified information, because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. It comes within Disqualifying Condition (DC) E2.A2.1.2.1. I conclude that the potential to inherit an interest in property in Iran is so tenuous that DC E2.A2.1.2.8. does not apply. No Mitigating Condition (MC) applies under Guideline B.

After considering all of the evidence of record on the issue of Foreign Influence, I conclude that the evidence supporting the SOR substantially outweighs any mitigating evidence.

### **(Guideline C - Foreign Preference)**

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant's failure to relinquish his current Iranian passport to the proper Iranian authorities and his stated intention to continue to maintain the passport and use it in the future raises serious Foreign Preference (Guideline C) concerns. It is a violation of the Money memorandum, and therefore Applicant is absolutely barred from retaining a security clearance. Applicant's unwillingness to renounce his Iranian citizenship so that he can maintain his Iranian passport, must also be considered adversely to Applicant.

DC E2.A3.1.2.1. applies because Applicant's renewal and use of his Iranian passport after he became a United States citizen is a continuing example of Applicant's exercising dual citizenship. DC E2.A3.1.2.2. also applies because of Applicant's failure to return his passport to the proper authorities. No MC applies in this case under Guideline C.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

#### **Paragraph 1. Guideline B: AGAINST THE APPLICANT**

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

#### **Paragraph 2. Guideline C: AGAINST THE APPLICANT**

Subparagraph 2. a.: Against the Applicant

Subparagraph 2.b.: Against 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.

**Martin H. Mogul**  
**Administrative Judge**