

DATE: December 27, 2005

In re:

SSN: -----

Applicant for Security Clearance

CR Case No.05-01697

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 44-year-old mechanical engineer who has worked for a federal contractor since 2002. Applicant was born in Iran and became a naturalized United States citizen in 1997. Applicant holds an Iranian passport that he uses when he visits his family in Iran. Applicant intends on keeping his Iranian passport. Applicant's Iranian father lives with him several months of each year Applicant returns periodically to Iran to visit his grandmother. Applicant failed to mitigate the security concerns raised by Guideline C, foreign preference, and Guideline B, foreign influence. Clearance is denied.

STATEMENT OF CASE

On June 17, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline C, foreign preference, and Guideline B, foreign influence.

In a sworn statement dated June 29, 2005, Applicant responded to the SOR allegations. In his response to the SOR allegations, Applicant admitted all the allegations under Guidelines C and B. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on August 23, 2005. The FORM was mailed to Applicant on September 19, 2005, and received on September 30, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide any additional information. The case was assigned to me on November 28, 2005.

FINDINGS OF FACT

Applicant is a 44-year-old mechanical engineer who has worked for a federal contractor since 2002. He was born in Iran, went to college in the United States, and became a naturalized United States citizen in 1997. Applicant has lived in the United States since he was 16 years old. Applicant was married in 1982, divorced in 1991, and remarried in 1994. He has a grown child from his first marriage. His wife is a United States citizen.

Applicant admits exercising dual citizenship with Iran by maintaining an Iranian passport that he uses to enter and exit that country. He used his Iranian passport in November 1998, December 2000, and in November 2003. Applicant stated "At this time I am not willing to relinquish my Iranian passport. All my family is in Iran and I want to be able to visit them every couple of years."⁽²⁾ Applicant's Iranian passport was issued on May 12, 1995 and renewed. His current Iranian passport does not expire until June 12, 2006. With regard to Applicant's trips to Iran he stated "It is difficult to make these trips with my American passport and a hardship for my father. He would have to provide invitation letters that have been approved, and also I would have to apply for visa for myself and my family."⁽³⁾

Applicant's father is a citizen and resident of Iran. He visits Applicant in the United States for two to three months each year. Applicant's grandmother is a citizen and resident of Iran. He also has extended family members who are citizens and residents of Iran. Applicant explained "My trips again are only to visit and have my kids there so they get to see their family. My father is 70 years old and my grandmother is 81. Once they are gone, my visits will not be as important and I will be able to relinquish my Iranian passport. I realize that this means I may not get my security clearance at this time. I have been living in the United States since I was 16 years old and have not (sic) intentions of going back to Iran. This is my home and I am a U.S. citizen only. I do not have a dual citizenship in my heart and the only reason I have an Iranian passport is so I can visit my family "⁽⁴⁾

"Iran is a constitutional Islamic republic, governed by executive and legislative branches that derive national leadership primarily through the Muslim clergy."⁽⁵⁾ Islamic law is the basis of authority.⁽⁶⁾ United States citizens are warned there is an increased potential threat about traveling in Iran because of ongoing tensions between Iran and the United States.⁽⁷⁾ They are advised they may be at risk of harassment or kidnaping.⁽⁸⁾ Iran is a country that sponsors terrorism.⁽⁹⁾ Some elements of the Iranian government and population remain hostile toward the United States and its citizens.⁽¹⁰⁾ The United States government does not have diplomatic or consular relations with Iran and therefore cannot provide protection or routine consular services to American citizens in Iran.⁽¹¹⁾ United States citizens of Iranian origin who are considered by Iran to be Iranian citizens have been detained and harassed by Iranian Authorities.⁽¹²⁾ Iran's human rights practices and strict limits on democracy are consistently and harshly criticized by the United States.⁽¹³⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline C, pertaining to foreign preference, and Guideline B, pertaining to foreign influence, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁴⁾ The government has the burden of proving controverted facts.⁽¹⁵⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽¹⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁸⁾

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No one has a right to a security clearance and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (20) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (21) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (22) It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline C-Foreign Preference is a security concern because 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.

Guideline B-Foreign Influence is a concern because 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 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. Contacts with citizens of other countries or financial interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline C and Guideline B.

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1 (*The exercise of dual citizenship*), and FP DC E2.A3.1.2 (*Possession and/or use of a foreign passport*) apply. Applicant has an Iranian passport. He uses it to avoid the requirements that United States citizens must comply with when traveling to Iran. Applicant intends on keeping his Iranian passport so he can continue to return to Iran without complying with these requirements. Applicant has exercised dual citizenship each time he used his Iranian passport to return to Iran. His passport is still valid. He used it in November 1998, December 2000, and November 2003.

I have considered all the mitigating conditions and especially considered Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.1 (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*), and FP MC E2.A3.1.3.4 (*Individual has expressed a willingness to renounce that citizenship*) and conclude none apply. Applicant exercises dual citizenship by an affirmative action of applying for, obtaining, and using his foreign passport. He uses his Iranian passport, to enter and exit Iran, and therefore shows a preference toward Iran. FP MC E2.A3.1.3.1 does not apply. Applicant stated he is not willing to renounce his dual citizenship and therefore FP MC E2.A3.1.3.4 does not apply. In accordance with a memorandum issued by Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, Arthur L. Money, dated August 16, 2000, (Money Memorandum), a security clearance must be denied or revoked for an Applicant with a foreign passport "unless the applicant surrenders the foreign passport." Surrender of the passport contemplates returning it to the issuing authority. Applicant affirmatively stated he intends to keep his Iranian passport. Applicant has failed to mitigate Guideline C, foreign preference.

Based on all the evidence, 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*), applies. An immediate family includes spouse, father, mother, sons, daughters, brothers, and sisters. (23) Applicant's father is an immediate family member who stays with Applicant two to three months each year. Applicant's grandmother, although not an immediate family member by definition, is an individual who Applicant has close ties of affection with and is a citizen and resident of Iran. Applicant visits his grandmother and other family

when he goes to Iran. No specific information was provided regarding Applicant's extended family.

I have considered all the mitigating conditions and especially considered Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1 (*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*), and FI MC E2.A2.1.3.3 (*Contacts and correspondence with foreign citizens are casual and infrequent*), and conclude none apply. The reason Applicant goes to Iran is to visit his family. The reason he maintains an Iranian passport and dual citizenship is to make it easier to go for visits. Applicant's contacts with his father and grandmother are more than casual and infrequent. Although Applicant's father and grandmother are not agents of a foreign power, because of his close relationship with them they could be put in a position that could be exploited and force Applicant to choose between loyalty to his family or the United States. Applicant willingly exercises dual citizenship so that he can stay close with his family in Iran. This makes him especially vulnerable and a security risk. I find FI MC E2.A2.1.3.3 does not apply. Applicant failed to mitigate the security concerns with regards to Guideline B, foreign influence.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the foreign preference and foreign influence. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline C and Guideline B are decided against Applicant.

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:

Paragraph 1 Foreign Preference (Guideline C) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Paragraph 2 Foreign Influence (Guideline B) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. 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. Clearance is denied.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. GE 2 (Applicant's sworn statement dated Feb. 24, 2004).
3. *Id.* at 2.
4. *Id.*
5. United States Department of State, Consular Information Sheet, dated Aug. 23, 2005.
6. *Id.*
7. Travel Warning: United States Department of State, Iran, dated August 23, 2005.
8. *Id.*
9. CRS Report for Congress, Iran: U.S. Concerns and Policy Responses, Updated January 19, 2005.
10. *Supra* note 7.
11. *Id.*
12. *Id.*
13. *Supra* note 9.
14. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
15. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
16. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
17. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
18. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
19. *Egan*, 484 U.S. at 531.
20. *Id.*
21. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
22. Executive Order 10865 § 7.
23. Directive E2.A2.1.3.1.