

DATE: November 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-03432

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant's use of an Iranian passport for travel to Iran to visit relatives in 1991, 2000, and 2001 generates foreign preference and foreign influence security concerns. She is a naturalized U.S. citizen who has lived nearly her entire adult life in the U.S. In 2005, she returned her Iranian passport to the issuing authority, and renounced her Iranian citizenship. Applicant has mitigated the foreign preference security concern. She has not mitigated the foreign influence security concern raised by the remaining immediate family member, a brother, who lives in Iran. Clearance is denied.

STATEMENT OF THE CASE

On August 26, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it was clearly consistent with the national interest to grant or continue a security clearance. ⁽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. The SOR alleged security concerns under Guideline C (foreign preference), and Guideline B, foreign influence.

Applicant answered the SOR on October 19, 2006, and requested a hearing. The case was assigned to me on July 25, 2006. On August 24, 2006, I scheduled a hearing for September 21, 2006. It was held as scheduled. At the hearing, the government provided three exhibits, and Applicant provided 13 exhibits in addition to her testimony. I took administrative notice, at the government's request, of three additional documents as follows: *U.S. Department of State Background Note on Iran*, dated August 2005, *U.S. Department of State, Country Reports on Human Rights Practices regarding Iran*, dated March 8, 2006, and the Congressional Research Service Report for Congress entitled, *Iran: U.S. Concerns and Policy Responses*, updated June 2, 2006. I marked them as Government's Exhibits 4 through 6, respectively. DOHA received the transcript on October 3, 2006.

FINDINGS OF FACT

Applicant is a 44-year-old married woman with three children, ages 24, 15, and 13. The oldest child is from a previous

marriage that ended in divorce in 1983. She has a bachelor of science degree, earned in 1989, and works for her employer as a software developer. She is highly respected on her job. Her supervisor characterizes her as "the most honest and trustworthy individuals [he has] had the privilege of withing within [his] 23-year career developing software for various government agencies." (2)

Applicant was born and raised in Iran. Shortly after graduating from high school, she got married. Approximately two years later, she and her husband divorced, and she emigrated to the United States.

Shortly after emigrating to the U.S., she remarried, and enrolled in college. She became a naturalized U.S. citizen in 1991, approximately two years after graduating from college.

Applicant's husband and parents are naturalized U.S. citizens. Her two youngest children are U.S. citizens by birth. All reside in the U.S. After she emigrated to the U.S., her ex-husband retained custody of their son, and raised him in Iran. Her son moved to the U.S. in December 2005 after her ex-husband died, and is now a permanent resident alien. (3) He never worked for the Iranian government before emigrating to the U.S. (4) Currently, he is attending a U.S. college, and has no intention of returning to Iran. (5) He does not reside with Applicant. (6)

Applicant's sister is an Iranian citizen who emigrated to the U.S. in March 2005. (7) She is a dentist who is currently working toward obtaining certification to practice dentistry in the U.S. Applicant's brother is an Iranian citizen and resident. He is an attorney specializing in family law. (8) They communicate by phone during holidays and special occasions. Also, Applicant sees him periodically when he visits the U.S. His U.S. visits last from three to seven months. (9)

Applicant traveled to Iran in 1991, 2000, and 2001. At the time she made the first trip, she still had a valid Iranian passport. When she arrived in Iran, Iranian officials confiscated her U.S. passport, and refused to allow her to enter the country unless she used her Iranian passport. (10) They later returned her U.S. passport after she completed a form expressing her preference to be considered a U.S. citizen.

Nevertheless, Applicant still had to use an Iranian passport to enter the country on future trips. In 1999, after her original Iranian passport expired, she applied for a new one, and used it to travel to Iran in 2000 and 2001. (11) The passport expired in August 2004. (12) Approximately two months later, she returned it to the issuing authority. (13)

Applicant's primary purpose for traveling to Iran was to visit her sister with whom she has a close relationship. (14) Because her sister now lives in the U.S., she no longer has any desire to visit Iran. She has never voted in an Iranian election, and does not own any property in Iran. She recently renounced her dual citizenship. (15)

Applicant was granted a security clearance in 1994. (16) At that time, her oldest son and sister were still living in Iran. (17)

Iran is a state sponsor of international terrorism. (18) It has a dismal human rights record, and is intensely hostile to the U.S. (19)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into disqualifying conditions (DC) that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information, and mitigating conditions (MC) that may be considered in deciding whether to grant an individual's eligibility for access to classified information.

An administrative judge need not view the adjudicative guidelines as inflexible rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the

Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept," all available reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Foreign Preference: - Guideline C: 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.

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

The pertinent disqualifying and mitigating conditions are discussed in the conclusions below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."⁽²⁰⁾ In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case, and to demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's loyalty is not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

Foreign Preference

Applicant's use of an Iranian passport to travel to Iran in 1991, 2000, and 2001 requires consideration of DC 1⁽²¹⁾ and DC 2.⁽²²⁾ She has not traveled to Iran since 2001, and has no intentions of returning. Her Iranian passport expired, and

she returned it to the Iranian authorities. She has never voted in an Iranian election, and owns no property in Iran. She has exceeded the requirements for the application of MC 4⁽²³⁾ by renouncing her Iranian citizenship. Applicant has mitigated the foreign preference security concern.

Foreign Influence

The Iranian citizenship status of Applicant's oldest son, sister, and brother triggers the applicability of DC 1.⁽²⁴⁾ There is a rebuttable presumption that their relationship is not casual or infrequent.⁽²⁵⁾

Both Applicant's sister and son have emigrated to the U.S. over the past two years, and are legal permanent residents with no intentions of returning. Consequently, their vulnerability to coercion is negligible. Also, neither worked for the Iranian government before emigrating to the U.S. MC 1⁽²⁶⁾ applies to these relationships, and the issue of whether MC 3⁽²⁷⁾ applies to these relationships is moot.

Conversely, Applicant's brother is both a citizen and resident of Iran. Because Iran is a hostile country, Applicant has a heavy burden to show that their relationship does not place her in a position where she might have to choose between loyalty to her brother and loyalty to the U.S.⁽²⁸⁾ What choice she might make if she was placed in such a situation has little probative value.⁽²⁹⁾

Applicant's testimony successfully rebutted the presumption that she has a close relationship with her brother. MC 3 applies. Also, the fact that her brother does not work for the Iranian government satisfies the first prong of MC 1. Applicant, however, is unable to satisfy the second prong of MC 1. Upon weighing the applicability of MC 3 with the inapplicability of MC 1, in conjunction with the nature of the country involved, I conclude Applicant has not mitigated the foreign influence security concern.

Whole Person Concept

In assessing Applicant's security worthiness, I have considered all of the applicable disqualifying and mitigating conditions of the foreign preference and foreign influence guidelines. Also, I have considered the nature of the country involved, and its relationship with the U.S. Balancing these criteria in conjunction with the whole-person concept, I conclude that although she has mitigated the foreign preference security concern, and the foreign influence security concern with respect to her son and sister, her relationship with her brother remains a concern. Clearance is denied.

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., Guideline C FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Paragraph 2., Guideline B: AGAINST THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: 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.

Marc E. Curry

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. Exhibit M, Reference Letter of Applicant's Supervisor, dated September 15, 2006.
3. Tr. 33.
4. Tr. 49.
5. Tr. 48.
6. Ex. F, Driver's License of Applicant's Son, issued May 17, 2006.
7. Tr. 35.
8. Tr. 54.
9. Tr. 36.
10. Tr. 27, Ex. 2, Security Clearance Application, dated October 16, 2003, at 5.
11. Copy of Iranian Passport, issued August 2, 1999, as included in Exhibit L, Miscellaneous Documents, at 3-5.
12. *Id.*
13. Exhibit B, Certified Letter to Interest Section of the Islamic Republic of Iran, Embassy of Pakistan, received October 26, 2005.
14. Tr. 64.
15. Exhibit A, Letter to Embassy of Pakistan, Interests Section of the Islamic Republic of Iran, dated September 16, 2006, at 1; Tr. 63.
16. Exhibit 2, Security Clearance Application, dated October 16, 2003, at 7.
17. Exhibit 3, Signed Sworn, Statement, dated June 15, 1993, at 5.
18. U.S. Department of State Background Note on Iran, dated August 2005, at 7.
19. *Id.* at 6.
20. *See generally*, Directive, Sec. 2.3., Sec. 2.5.3., Sec. 3.2., and Sec. 4.2.
21. The exercise of dual citizenship.
22. Possession and/or use of a foreign passport.

23. Individual has expressed a willingness to renounce dual citizenship.

24. 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.

25. ISCR Case No. 01-03120 (App. Bd. February 2, 2002) at 8.

26. 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.

27. Contact and correspondence with foreign citizens are casual and infrequent

28. ISCR Case No. 01-26893 (App. Bd. October 16, 2002) at 8.

29. ISCR Case No. 03-15205 (App. Bd. January 21, 2005).