

DATE: April 25, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-03848

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a dual citizen of the United States and Iran, has acted in such a way as to indicate a preference for a country other than the United States. He applied for and was issued an Iranian passport, even though he was a United States citizen, and he used the Iranian passport to enter and exit Iran. He returned his Iranian passport to the proper Iranian authorities, but without expressing a desire to relinquish the passport. He also has expressed an unwillingness to renounce his Iranian citizenship. Applicant has a close relationship with his father-in-law and mother-in-law, who are citizens and residents of Iran. Mitigation has not been shown. Clearance is denied.

*Applicant's name was incorrectly transposed on the SOR.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated August 19, 2005, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, denied or revoked. The SOR was based on Foreign Preference (Guideline C) concerns related to his exercise of dual citizenship with the United States and Iran, and on Foreign Influence (Guideline B) concerns because of the foreign residency and citizenship of family members.

Applicant, acting *pro se*, filed a notarized response dated September 19, 2005, to the allegations set forth in the SOR, and initially requested a decision on the written record. On December 8, 2005, Applicant requested a hearing before a DOHA Administrative Judge.

On January 20, 2006, 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 February 16, 2006, and the hearing was conducted on March 16, 2006.

At the hearing, Department Counsel offered seven documentary exhibits (Exhibits 1 through 7) and no witnesses were called. Applicant offered one documentary exhibit at the hearing (Exhibit A) and offered his own testimony. The transcript (Tr) was received on March 30, 2006.

FINDINGS OF FACT

The SOR contains two allegations, 1.a., and 1.b., under Guideline C and one allegation, 2.a., under Guideline B. Applicant admitted all of the SOR allegations. 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 admitted documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 43 year old employee of a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. He received a Bachelor's degree in electrical engineering from a United States university and will receive a Master's Degree in Computer Science shortly.

Applicant was born in Iran. He came to the United States in 1978 with his family, and he became a United States citizen in 1990. He is married and has no children. His wife was born in Iran and is now a dual citizen of Iran and the United States.

Paragraph 1 (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 considers himself a dual citizen of Iran and the United States. He applied for an Iranian passport which was issued on March 7, 1996, even though he was a United States citizen. His wife obtained an extension on his Iranian passport in March 17, 2004, so that it would not expire until July 6, 2006. He traveled to Iran from June 19, 2004, until July 9, 2004, and he used his Iranian passport to enter and exit Iran(Exhibit 3). Applicant's wife still maintains her Iranian passport, and she has used it to travel to Iran in 1995 and 2000, as well as the trip in 2004.

Applicant relinquished his Iranian passport in December 2005, by tearing it up and returning it to the Embassy of Pakistan (Exhibit A). However, at that time he did not communicate why he was returning his passport, nor did he take any affirmative step to renounce his Iranian citizenship (Tr at 34).

At the hearing, Applicant testified that he still desires to retain his Iranian citizenship (Tr at 44). Based on his retaining his Iranian citizenship and failing to explain to the Iranian Government that he did not desire to have an Iranian passport, it appears that Applicant may be able to apply for another Iranian passport in the future.

Paragraph 2 (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 father-in-law and mother-in-law are citizens and residents of Iran. They are in their 80s and are long retired. She was a teacher, and he worked in an administrative position for the courts. They live half the year in Iran and half in the United States, and they live with Applicant two or more months every year when in the U. S. Applicant talks to them every two months when they are in Iran, and his wife talks to them at least one time a week (Tr at 35).

Applicant traveled to Iran in 2004, as discussed above. He has no set plans to return to Iran in the future (Tr at 27, 29).

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 C and B:

(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 application and use of an Iranian passport, while a United States citizen, and his unwillingness to

renounce his Iranian citizenship, which does allow him the option of renewing his passport, must be considered adversely to Applicant and it raises serious Foreign Preference (Guideline C) concerns.

Disqualifying Condition (DC) (E2.A3.1.2.1.) applies because Applicant's 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 use of his Iranian passport. I find that because of Applicant's stated unwillingness to renounce his Iranian citizenship, no mitigating Condition (MC) applies in this case under Guideline 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. As Applicant's father-in-law and mother-in-law, with whom he has a self-described close personal relationship are citizens and residents 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).

The Iranian citizenship of members of Applicant's immediate family create 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. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001). This, Applicant has not been able to do.

The evidence of existence of immediate family members, who are citizens and residents of Iran, comes within 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. I can not find that MC (E2.A2.1.3.3.) applies because the contact between Applicant and his in-laws could not be described as limited, particularly since they live with Applicant two or more months every year.

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.

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 C: AGAINST APPLICANT

Subparagraph 1. a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against 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

