

DATE: May 18, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-04648

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Candace Le'i , Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, an Iranian born, United States citizen, has lived in the United States since 1978. He has renounced his Iranian citizenship and returned his Iranian passport to the Iranian Government. Because of Applicant's powerful attachment to his wife, son, and brother in the United States, neither Applicant's sister, who is a resident and citizen of Iran, nor his father-in-law and mother-in-law, who are citizens and residents of Bolivia, are in a position to be exploited in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.

### **STATEMENT OF THE CASE**

On November 25, 2005, 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) 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 or denied. The SOR was based on Foreign Preference (Guideline C) and Foreign Influence (Guideline B) concerns.

Applicant, acting *pro se*, filed a notarized response, dated December 26, 2005, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On January 30, 2006, the case was assigned to this Administrative Judge to conduct a hearing. Pursuant to formal notice, dated February 16, 2006, a hearing was initially scheduled for March 14, 2006. Because of a request by Applicant, the case was rescheduled, and it was held on April 18, 2006.

At the hearing, Department Counsel offered 12 documentary exhibits (Exhibits 1 - 12) and no witnesses were called. Applicant offered 21 documentary exhibits (Exhibits A - U) and offered his own testimony. The transcript (Tr) was received on April 27, 2006.

## **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. The SOR contained one allegation, 1.a., under Guideline C, and four allegations, 2.a. through 2.d., under Guideline B. Applicant admitted all of the SOR allegations. All of 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 and the documents, and upon due consideration of that evidence, I make the additional Findings of Fact:

Applicant is 46 years old and is employed as a Software Engineer by a United States defense contractor, which seeks a security clearance on his behalf. He received a Master of Science Degree in Electrical Engineering in 1993 from a United States university.

Applicant was born in Iran in 1959, and in 1978, at the age of 18 he moved to the United States, where he has lived since that time. He became a United States citizen in 1990.

### **Paragraph 1 (Guideline C - Foreign Preference)**

The Government alleges in this paragraph that the 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.

In the years 1991, 1993, and 1994, Applicant traveled to Turkey to visit his family, who came from Iran, where they resided. On all of these trips he used his United States passport. In 1997, Applicant's mother became ill and was not physically able to leave Iran. After requesting and receiving approval from the United States State Department, Applicant applied for and received an Iranian passport, which he was informed was necessary for him to visit his mother in Iran. In 1998, Applicant visited his mother for two weeks in Iran. In 2000, he went back to Iran to attend his mother's funeral. On both of these trips he used his Iranian passport. These two trips were the only time Applicant used his Iranian passport. Applicant has not returned to Iran nor used his Iranian passport since 2000, not even in 2004 when his father died.

On January 31, 2006, Applicant sent to the Embassy of Pakistan, Interests Section of the Republic of Iran Office, a registered letter in which he renounced his Iranian citizenship and returned his Iranian passport. The Director of this Iranian office wrote a letter on February 7, 2006, indicating that the letter of Applicant with his passport had been received (Exhibits C, D, E).

### **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 has a sister who is a resident and citizen of Iran. She is a housewife, and her husband is an anesthesiologist. Neither his sister, nor her spouse, belongs to, or is active with any national government agency of Iran. Applicant speaks to his sister two or three times a year. Applicant described his relationship with his sister as distant (Tr at 46-49, 70).

Applicant's brother also was born in Iran, and he came to the United States in 1994. He has resided here since that time. Applicant's brother works full time and is attending law school on a part time basis. He is still an Iranian citizen, but he has no desire to return to Iran.

Applicant's wife was born in Bolivia and came to the United States in 2000. She is currently a permanent resident of the United States, and when she becomes eligible she will apply to be a United States citizen. Applicant and his wife got married in 2003, and their son is less than a year old and a natural-born United States citizen.

Applicant's father-in-law and mother-in-law are residents and citizens of Bolivia. The father-in-law is a retired mechanic

and the mother-in-law is a housewife. They only speak Spanish and since Applicant's knowledge of Spanish is limited they do not have much communication.

Applicant purchased a home in the United States in 2005 for \$585,000. He also owns another United States home that has been valued at \$305,000. He has other assets estimated to be worth \$400,000. He has no assets outside of the United States, nor he will not be inheriting anything out of the United States.

Applicant introduced six positive letters of reference that spoke of Applicant as trustworthy and conscientious (Exhibit P). A friend and former co-worker said Applicant is, "an intelligent and honest person with high integrity." She also said he is "a hard-working, respectable and trustworthy individual." He also introduced his latest Performance Evaluation which rated his overall assessment as "Exceeded Expectations."

### **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 use of an Iranian passport after becoming a United States citizen raises serious Foreign Preference (Guideline C) concerns. At the time the SOR was issued, Disqualifying Condition DC (E2.A3.1.2.1.), the exercise of dual citizenship could be argued to apply because he renewed his Iranian passport, and DC (E2.A3.1.2.2.), possession and/or use of a foreign passport, applied. However, Applicant renewed his passport and used it on two occasions, to visit his mother when she became ill and to attend her funeral. He has subsequently returned his Iranian passport and formally renounced his Iranian citizenship. Mitigating Condition (MC) (E2.A3.1.3.4.), an individual has expressed a willingness to renounce his dual citizenship, is applicable, as Applicant has renounced his Iranian citizenship. Guideline C is found for Applicant.

#### **(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. Because Applicant has a sister, who is a citizen and resident 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 member does not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002). Applicant's in-laws, who are citizens and residents of Bolivia also come within DC (E2.A2.1.2.1.), immediate family members, or persons to whom the individual has close ties of affection or obligation, are citizens of, or resident or present in, a foreign country. Based on the nature of the overall record and the totality of the evidence, including the lack of government involvement of Applicant's family members, Applicant's powerful attachment to his wife and son in the United States and to the United States, itself, I have determined that sister in Iran, with whom he does not have a close relationship and his in-laws in Bolivia, with whom he never communicates, do not constitute an unacceptable security risk, and MC (E2.A2.1.3.1.), a determination that the immediate family members, 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 involved and the United States, applies.

After considering all of the evidence of record on this issue, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR, and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would reject it, and would report the incident to the proper authorities.

### 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: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2. a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

**DECISION**

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

**Martin H. Mogul**

**Administrative Judge**