

DATE: October 31, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 06-00961

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Sara C. Vins, Esq.

SYNOPSIS

Applicant's retention of an active Iranian passport, and his contacts with several Iranian relatives raise unmitigated security concerns. Eligibility for occupying an Information Systems position is denied.

STATEMENT OF THE CASE

On March 22, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (the Regulation); Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended and modified (Directive); a memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security, *Adjudication of Trustworthiness Cases*, dated November 19, 2004); and a memorandum from the Deputy Director for Personnel Security, Office of the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C3I), dated August 4, 1999.

The SOR detailed reasons under Guideline C (foreign preference), and Guideline B (foreign influence), why DOHA could not make a preliminary affirmative finding that it was clearly consistent with the national interest to grant or continue Applicant's eligibility for occupying an Information Systems Position to support a contract with the Department of Defense, and recommended a referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked. Applicant answered the SOR on June 22, 2006, and requested a hearing. The case was assigned to me on July 21, 2006. On August 4, 2006, I scheduled a hearing for August 24, 2006. It was held as scheduled. At the hearing, the government provided three exhibits, and Applicant provided one exhibit in addition to his testimony and that of a character witness. At the government's request, I took administrative notice 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, released on 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 March 23, 2006.

RULINGS ON PROCEDURE

At the beginning of the hearing, the government argued that DoD Regulation 5200.2-R was not applicable to this case, and moved to amend the SOR to delete any reference to it. After reserving judgment for further consideration of the motion after the close of the hearing, I denied it on October 16, 2006.

After the close of the hearing, Applicant who originally appeared *pro se*, retained an attorney. On September 19, 2006, the attorney filed a notice entering her appearance, and a motion for rehearing the case. I denied it on October 4, 2006.

FINDINGS OF FACT

Applicant admitted all of the SOR allegations except subparagraphs 1.c. and 1.d. I have incorporated them into the findings of fact. After a thorough review and consideration of the evidence in the record, I make the following additional findings of fact.

Applicant, a dual citizen of the United States and Iran, is a 51-year-old married man with three children ages 24, 22, and 2. His two oldest children are from a previous marriage. He has been working as a systems specialist since 1993. He emigrated to the United States from Iran with his first wife in 1978 to attend college. Since living in the U.S., he has earned bachelors' degrees in English, sociology, and computer science, and has earned credits toward a master's degree in English. He became a naturalized U.S. citizen in 1995. He and his first wife divorced in 2002, and he remarried in 2003. Both of his children by his first wife are U.S. citizens by birth, and live in the U.S. His youngest child is also a U.S. citizen.

Several of Applicant's family members, including his current wife, are Iranian citizens. His wife, a homemaker, obtained a green card in 2004, and is in the process of becoming a U.S. citizen. She lives with him in the U.S. The others are citizens and residents of Iran. His mother-in-law is a homemaker and his father-in-law is a shopkeeper. Both are uneducated and have no ties to the Iranian government. His contact with them consists of a brief exchange of pleasantries on occasions when they call his wife, and he answers the phone. These conversations occur approximately twice per month. He met his remaining in-laws at his wedding in Iran in 2003 and has had no other contact with them since that time.

Applicant has a close relationship with his parents.⁽¹⁾ His father is a self-employed farmer, and his mother is a homemaker. Both live in a rural, remote part of the country, and have no ties to the Iranian government. He speaks with them every two weeks by phone, and they travel to the U.S. every 12 to 15 months to visit him.⁽²⁾ When visiting, they live with Applicant, and the visits last approximately four months.

One of Applicant's brothers is a cabdriver, and the other is unemployed. He rarely talks to them, and last saw them at his wedding in 2003. Neither brother has either a formal education or any ties to the government.

Applicant's sister is a math teacher. Although her contact with Applicant has been rare in the past, she is planning to travel to the U.S. to visit her daughter, a naturalized U.S. citizen who lives with him. She will stay with him during the visit. His sister's husband is a publisher.⁽³⁾ Applicant does not keep in contact with him.

Applicant possesses an active Iranian passport that does not expire until 2010. He obtained it in 2000, in order to facilitate travel to Iran. After he obtained it, he used it to travel to Iran approximately once per year for the following five years.⁽⁴⁾ Each time, he returned using his U.S. passport.⁽⁵⁾

Prior to obtaining the passport, Applicant had not visited Iran since emigrating to the U.S. in 1978. His decision to return was prompted by a serious illness his mother experienced. The successive trips were for pleasure, and to visit his family.⁽⁶⁾

Applicant met his current wife on his second trip to Iran, and married her on the following trip in 2003. After visiting her in Iran in 2004, he traveled to the U.S. embassy in Turkey in order to obtain a travel visa for her to enter the U.S. ⁽⁷⁾

Iran is a state sponsor of international terrorism. ⁽⁸⁾ It has a dismal human rights record, and is intensely hostile to the U.S. ⁽⁹⁾

POLICIES

The adjudicative guidelines set out in the Regulation apply to ADP trustworthiness determinations. DoD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable determination may be made. ⁽¹⁰⁾

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 in reaching fair and impartial common sense decisions.

The standard that must be met for assignment to sensitive duties is that, "based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." ⁽¹¹⁾ Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

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. 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.

The following adjudicative guidelines are raised:

Foreign Preference: 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: 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 (1) not citizens of the United States or (2) may be subject to duress.

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

On August 16, 2000, the ASD/C3I issued a memorandum to clarify Guideline C, Foreign Preference, relative to cases involving possession and/or use of a foreign passport. "The possession and use of a foreign passport in preference to a United States passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance must be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." ⁽¹²⁾

Since the protection of national security (and sensitive information) is the paramount consideration, the final decision in each case must be reached by applying the standard that the determination of an applicant's eligibility for occupying an ⁽¹³⁾

Information Systems Position is "clearly consistent with the national interest." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The government is responsible for presenting witnesses and other evidence to establish facts in the SOR that have been controverted.⁽¹⁴⁾ The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable trustworthiness determination.⁽¹⁵⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁶⁾ These same burdens of proof apply to trustworthiness determinations for ADP positions.

CONCLUSIONS

Foreign Preference

Applicant exercised his dual Iranian citizenship by applying for a passport after becoming a naturalized U.S. citizen, and using it to travel to Iran on multiple occasions from 2000 to 2005. His Iranian passport is still active. Foreign Preference Disqualifying Condition (FP DC) 1: *The exercise of dual citizenship*, and FP DC 2: *Possession and/or use of a foreign passport*, apply.

Applicant's dual citizenship is based solely on his birth in Iran. Foreign Preference Mitigating Condition (FP MC) 1: *Dual citizenship is based solely on parents' citizenship or birth in a foreign country*, applies. None of the other mitigating conditions apply.

A clearance must "be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."⁽¹⁷⁾ Here, Applicant is still in possession of his active Iranian passport, and he presented no evidence that he obtained official approval for its possession. His clearance must be denied.

Foreign Influence

Applicant's relationship with his foreign wife, parents, siblings, and in-laws triggers the applicability of Foreign Influence Disqualifying Condition (FI DC) 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*. His relationship with his wife also triggers the applicability FI DC 2: *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*.

Because Iran is a hostile country, Applicant has a heavy burden to show that his relationship with family members who are Iranian citizens and/or residents does not place him in a position where he might have to choose between his loyalty to them and the U.S.⁽¹⁸⁾ He has met this burden with respect to his wife. She lives with him in the U.S., and is in the process of becoming a U.S. citizen. The vulnerability to coercion is minimal regardless of the hostility of Iran to the U.S. Foreign Influence Mitigating Condition (FI MC) 1: *A determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk* applies.

Applicant's vulnerability to coercion through his wife's siblings, and his sister's husband is minimal because of his tangential relationship to them. He has only seen his wife's siblings on one occasion, and does not talk to them. There is no record evidence that his wife keeps in touch with them. He is only vaguely acquainted with his sister's husband. Both FI MC 1, and FI MC 3: *Contact and correspondence with foreign citizens are casual and infrequent*, apply to these relationships.

The relationships with Applicant's other relatives pose unmitigated security concerns. He speaks with his parents on a regular basis, and they come to the U.S. every 12 to 15 months to visit him. Each visit lasts approximately four months. Moreover, he visited them approximately once per year from 2000 through 2005 in Iran, and often took the opportunity, during these trips, to visit his siblings.

Although Applicant only speaks to his parent-in-laws when they call for his wife, there is a rebuttable presumption that their relationship creates a vulnerability to coercion through his wife. ⁽¹⁹⁾ He presented no evidence to rebut this presumption. Consequently, although FI MC 3 applies, FI MC 1 does not.

Considering the applicable disqualifying and mitigating conditions in conjunction with the whole-person concept, I conclude Applicant has not mitigated the foreign influence security concern.

FORMAL FINDINGS

I conclude Applicant is not eligible to occupy an Information Systems Position. 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.: AGAINST THE APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2., Guideline B.: AGAINST THE APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: 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 Applicant's eligibility for occupying an Information Systems Position designated ADP I/II/III. Eligibility is denied.

Marc E. Curry

Administrative Judge

1. Exhibit 2, Signed, Sworn Statement dated November 22, 2004, at 6.
2. *Id.* at 4.
3. Tr. 45.
4. Exhibit 2 at 3; Tr. 52.
5. Tr. 37.

6. *See* n. 1, *supra* at 5.

7. Tr. 39.

8. U.S. Department of State Background Note on Iran, dated August 2005, at 7.

9. *Id.* at 6.

10. Regulation ¶C8.2.1.

11. Regulation ¶ C6.1.1.1.

12. ASD/C3I Memorandum, "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline," dated August 16, 2000.

13. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

14. Directive ¶E3.1.14.

15. Directive ¶E3.1.15.

16. Directive ¶E2.2.2.

17. *See* note 12.

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

19. ISCR Case No. 01-03120 (App. Bd. February 20, 2002).