

DATE: October 11, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-05791

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, 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 renewed an Iranian passport, and he used it to enter and exit Iran, after he became a United States citizen in 1989. His Iranian passport has now expired, although he never relinquished it to the proper Iranian authorities. Applicant has a very close relationship with his family, who are citizens and residents of Iran. Mitigation has not been shown. Clearance is denied.

### **STATEMENT OF THE CASE**

On April 3, 2006, 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, continued, 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 close family members.

Applicant, acting *pro se*, filed a notarized signed and sworn response to the SOR (RSOR), dated April 26, 2006. He requested that his case be decided on the written record in lieu of a hearing.

On May 31, 2006, Department Counsel submitted the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant had until July 13, 2006, to file a response to the FORM, and a timely response was received. The case was assigned to this Administrative Judge on October 5, 2006.

In the FORM, Department Counsel offered eight documentary exhibits (Exhibits 1 - 8). Applicant's response to the FORM has been identified and entered as Exhibit A.

### **FINDINGS OF FACT**

The SOR contains three allegations, 1.a., through 1.c., under Guideline C, and three allegations, 2.a. through 2.c., under Guideline B. Applicant admitted all of the SOR allegations. In Exhibit A, Applicant denies SOR allegation 1.a., and he gives further explanations to the other 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 FORM, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 49 year old employee of a defense contractor. He is married and has one daughter. He received a Bachelor of Science degree in Electrical Engineering from a United States university.

Applicant was born in Iran in 1957, and he moved to the United States in 1977. He became a United States citizen in 1989.

#### **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 maintained his Iranian passport, even though he was a United States citizen since 1989, and he renewed it on October 14, 2002. He traveled to Iran in 1994, 1995, 1997, and 1999, and he used his Iranian passport to enter and exit Iran, because he would not have been allowed to enter Iran with his United States passport (RSOR).

Applicant's Iranian passport expired on March 16, 2004, although he did not relinquish it to proper authorities. He has never taken any affirmative action to renounce his Iranian citizenship, but he indicated that he was willing to do so (Exhibit A).

#### **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 mother, sister, and two brothers are dual citizens of Iran and the United States, and they reside in Iran. His father is a citizen and resident of Iran. None of these family members has been or is currently connected with the Iranian government (Exhibit A). There was no information in the record to indicate how often Applicant communicates with any of these family members. However, Applicant described his family as being very close, and he expressed his hope and desire that they could all live together in the United States (Exhibit A).

Applicant traveled to Iran on two occasions in addition to those discussed above. These were in 1978 and 1979, before he became a United States citizen.

### **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:

#### **(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, renewal, and use of an Iranian passport, while a United States citizen, 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 his stated willingness to renounce his Iranian citizenship was made in good faith and therefore, Mitigating Condition (MC) (E2.A3.1.3.4.) applies in this case under Guideline C. However, since Applicant has not actually renounced his Iranian citizenship, nor has he returned his Iranian passport to the proper authorities, Applicant still has the ability to renew his Iranian passport, and because that is the only way he can see his family in Iran, I have not been convinced that he will not renew his Iranian passport in the future.

**(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 family, including his mother, father, sister, and two brothers, with whom he has a self-described close 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 do not find that any MC applies under Guideline B.

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

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: 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**