

DATE: January 31, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-14748

**ECISION OF ADMINISTRATIVE JUDGE**

**JACQUELINE T. WILLIAMS**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a 50-year-old engineer, was born in Iran. He became a naturalized U.S. citizen in 1986. He visited Iran in 1995 and 1997 and used his Iranian passport instead of his United States passport. He continued to possess the passport after it expired in 2002. His sister is a citizen and resident of Iran. Applicant has not presented evidence indicating whether she has any connection or association with the Iranian government, whether she is an agent of a foreign government, or whether she is in a position to be exploited by a foreign government. His sister's residence and citizenship in Iran constitutes an unacceptable security risk. Under the facts herein, the Government's security concerns are not mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On September 14, 2004, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).<sup>(1)</sup> On July 21, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) 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 Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be granted or revoked.

In a sworn, written statement, executed on August 16, 2006, Applicant responded to the SOR allegations and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on September 29, 2006. A complete file of relevant material (FORM) was provided to Applicant. The Government submitted eight exhibits in support of the SOR. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He had 30 days to respond to the FORM. He chose not to respond.

Gov. Exs. 1-8 are admitted, without objection. The case was assigned to me on November 29, 2006.

### FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to foreign preference under Guideline C, subparagraph 1.b. He also admitted the factual allegations pertaining to foreign influence under Guideline B, subparagraphs 2.a and 2.b. Those admissions are incorporated herein as findings of fact. He denied the remaining factual allegations. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 50 years old and has been employed as an engineer by a defense contractor since October 1986.<sup>(2)</sup> He was born in Iran and became a naturalized U.S. citizen in July 1986.<sup>(3)</sup> In 1976, Applicant attended a well-known university in the U.S. and was awarded his bachelor of science degree in engineering in June 1980. He is divorced and has no children.

Applicant exercised dual citizenship with Iran and the United States. After becoming a naturalized U.S. citizen in 1986, he visited Iran in 1995 and 1997 and used his Iranian passport during both trips. He contends the Iranian government issued him the passport because "[i]t is Iranian law that every Iranian born visiting must be issued an Iranian passport regardless of being a citizen of another country."<sup>(4)</sup> Applicant renewed his Iranian passport on about March 2, 1997, and it expired on about April 2, 2002. On February 10, 2006, Applicant was interviewed by an authorized investigator of the Defense Security Service, and stated he still possesses his expired Iranian passport.

Applicant's sister is a citizen and resident of Iran. The record is silent as to her occupation or relationship to the Iranian government, if any.

The government of Iran is controlled by radical Islamic clerics. The State Department reports it has a poor record of protecting human rights.<sup>(5)</sup> Iran has a history of poor relations with the U.S. because Iran's efforts to acquire nuclear weapons and other weapons of mass destruction, its support for an involvement in international terrorism, and its violent opposition to the Middle East peace process.<sup>(6)</sup>

### POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(7)</sup> The Government has the burden of proving controverted facts.<sup>(8)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(9)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(10)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(11)</sup>

No one has a right to a security clearance<sup>(12)</sup> and "the clearly consistent standard indicates that security clearance<sup>(13)</sup>

determinations should err, if they must, on the side of denials." Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. <sup>(14)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. <sup>(15)</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

**Guideline C (Foreign Preference):** *The Concern:* 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.

**Guideline B (Foreign Influence):** *The Concern:* 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 result in the compromise of classified information.

On August 16, 2000, the Assistant Secretary of Defense, issued the "Money Memorandum," clarifying certain issues in cases involving possession and/or use of a foreign passport. Pursuant to this memorandum, an applicant possessing a valid foreign passport cannot be granted access to classified information unless he does one of two things: (1) surrenders the passport, or (2) offers credible evidence that he obtained official approval for its use from the appropriate United States Government agency.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

### **Foreign Preference**

The Government has established a *prima facie* case under Guideline C, Foreign Preference. Applicant became a naturalized U.S. citizen in 1986. He visited Iran in 1995 and 1997 and used his Iranian passport during both trips. Thus, he exercised on of the rights and privileges of a dual citizen of Iran by using an Iranian passport although since 1986 he is a naturalized U.S. citizen. He still possesses his expired passport from Iran. The DOHA Appeal Board has held that possession of an expired passport constituted possession under the Directive. <sup>(16)</sup> Thus, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.2 (*possession and/or use of a foreign passport*) applies. <sup>(17)</sup>

Various conditions can mitigate a security concerning regarding foreign preference. Applicant was born in Iran and is a dual citizen of the United States and Iran. He exercised his citizenship with Iran by using his Iranian passport. However, he used his foreign passport more than 10 years ago. Moreover, even though he possessed his Iranian passport after it expired, there is no evidence that he ever used it or that he renewed it. Thus, Foreign Preference Mitigating Condition E2A3.1.3.1 (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) applies.

### **Foreign Influence**

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. Applicant's sister is a citizens and resident of Iran. Consequently, Foreign Influence Disqualifying Condition 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*) applies.

Various factors can mitigate the foreign influence security concern. The record is silent as to extent of the relationship or contact between Applicant and his sister, but the assumption is that he has close ties of affection or obligation toward her. Also, Applicant failed to provide any information about his sister's occupation or her relationship, if any, with the Iranian government, or whether she is an agent of a foreign government, or whether she is in a position to be exploited

by a foreign government. His sister's residence and citizenship in Iran constitutes an unacceptable security risk. Applicant has not provided any information to mitigate foreign influence security concerns. Thus, none of the available Foreign Influence Mitigating Conditions apply.

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. Applicant is a mature individual who has lived in the U.S. for more than 20 years. He has strong ties to this country. His use of his Iranian passport to travel to and from that country in both 1995 and 1997, even though he was a naturalized U.S. citizen since 1986, is a moot issue due to the passage of time. However, more problematic is the fact that to date, Applicant's sister continues to be a resident and citizen of Iran. The record is silent as to whether she has any connection or association with the Iranian government, whether she is an agent of a foreign government, or whether she is in a position to be exploited by a foreign government. It is assumed that he has close ties of affection or obligation to his sister. Thus, Applicant cannot be trusted to resolve any conflict of interest in favor of the U.S. I conclude Applicant has not mitigated the potential security concerns arising from his personal ties to Iran. Accordingly, allegations 1.a through 1.c of the SOR are concluded in favor of Applicant, but allegations 2.a and 2.b of the SOR are concluded against Applicant.

### **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 (Foreign Preference): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Paragraph 2. Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams

Administrative Judge

1. Gov. Ex. 1 (Security Clearance Application, executed September 14, 2004).
2. *Id.*
3. *Id.*
4. Applicant Answer to SOR, dated August 16, 2006.
5. U.S. Department of State Country Report on Human Rights Practices 2005 - Iran, dated March 8, 2006, at 2-7.
6. *Id.* at 7.

7. ISCR Case No. 96-0277 (July 11, 1997) at 2.
8. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
9. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
10. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
12. *Egan*, 484 U.S. at 531.
13. *Id.*
14. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
15. Executive Order 10865 § 7.
16. ISCR Case No. 03-23236 at 2 (App. Bd. Feb. 17, 2006).
17. The New Adjudicative Guidelines, effective on September 1, 2006, are not applicable in this case. However, Guideline C, Foreign Preference Mitigating Condition 11(d) states that (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*). If that guideline were to apply in this case, Appellant's possession of an expired passport could be a mitigating condition.