

ISCR Case No. 07-04011

SSN: -----

Applicant for Security Clearance

APPEARANCES

Jennifer I. Goldstein, Department Counsel

Pro Se

The Applicant is a dual citizen of Iran and the United States. He has expressed a willingness to renounce his Iranian citizenship and he has surrendered his Iranian passport. Despite this, he has significant family ties in Iran that could raise a security concern. Clearance is denied.

STATEMENT OF THE CASE

On May 2, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR on May 24, 2007, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 11, 2007. A notice of hearing was issued on August 9, 2007, scheduling the hearing for August 29, 2007. At the hearing the Government presented six exhibits. The Applicant presented six exhibits and testified on his own behalf. The record was left open until September 18, 2007, to allow the Applicant an opportunity to provide additional evidence. The Applicant submitted one Post-Hearing Exhibit that was admitted into evidence and the record was closed on September 19, 2007. The official transcript (Tr.) was received on September 12, 2007.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 25 years of age and has a Bachelor's of Science in Computer Engineering. He is employed as a Software Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

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 show a preference for another country over the United States.

The Applicant was born in the United States to dual citizens of Iran and the United States. Iranian law declares that if the Applicant's father is an Iranian citizen, the Applicant is automatically an Iranian citizen. Thus, the Applicant is a dual citizen of Iran and the United States. The Applicant lived in the United States his entire life until June 2006, when he moved to France for a work assignment for a defense contractor. He has never resided in Iran.

As a child, the Applicant traveled to Iran with his parents on a number of occasions to visit relatives and entered the country by using his parent's passport. After the age of eighteen, he obtained his own Iranian passport that was issued to him on February 11, 2001. He has used that passport on one occasion to travel to Iran to visit relatives. This Iranian passport expired on February 11, 2006, and the Applicant does not know where it is. He further states that he has no intention to renew it. He indicates that he has contacted the Iranian embassy in Paris and requested to renounce his Iranian citizenship. They referred him to Article 988 indicating that Iranian national cannot abandon their nationality except under certain conditions that he is unable to meet.

Since 1998, the Applicant has traveled to Iran on three separate occasions. During his most recent trip to Iran, from December 19, 2005 through January 8, 2006, he used his own Iranian passport.

By letter dated August 30, 2007, the Applicant requested to renounce his Iranian citizenship and surrender his Iranian passport. (*See Applicant's Post-Hearing Exhibit*).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's father, mother, uncle, two aunts, grandparents and extended family members are citizens of and reside in Iran. The Applicant has a close bond and loving relationship with his parents in Iran. They are also dual citizens of Iran and the United States. His mother is 59 or 60 years old. She is a retired housewife. His father is 60 or 61 years of age and was a computer engineer in the United States before moving to Iran. Based upon the nature of his work and past experience his father has the capacity to understand what the Applicant is doing for the United States defense department. His father permanently resides in Iran because of his obligations to stay and take care of the Applicant's grandparents. The Applicant's mother travels back and forth between Iran and the United States. His parents plan on eventually returning to the United States, but they are not certain when. The Applicant maintains regular contact with his parents in Iran. He contacts his mother in Iran about once a week and his father about twice a week by e-mail or telephone. The Applicant's father served in the Iranian military during the Shah's regime. His parents own property in Iran that they have inherited. His parents both know that he has applied for a security clearance.

The Applicant has an older brother who is a citizen and resident of the United States.

The Applicant contacts his grandparents in Iran about once a year. They own property and an apartment building in Iran.

The Applicant has no assets in Iran at the present time. Bank statements of the Applicant show that he has significant financial assets in the United States. (*See Applicant's Post-Hearing Exhibit*). In the United States, he has about \$100,000 dollars in his 401(k) retirement account, and about another \$100,000 dollars in other investments which include stocks, mutual funds and bank accounts. He also has a bank account in France, that enables him to handle his regular monthly expenses while working abroad. He owns no property in the United States or in Iran.

The Applicant was a member of the Iranian Student foundation while he was a student at the University of Maryland. He explained that the organization was not political or affiliated with the Iranian government in any way. It was a cultural or social group and was sponsored by the University.

I have taken administrative notice of the current political conditions in Iran. The fact that Iran has no diplomatic relations with the United States. Iran's efforts to acquire nuclear weapons and other weapon of mass destruction, its support for and involvement in international terrorism, its support for violent opposition to the Middle East peace process, and its dismal human rights records I have considered the fact that Iranian Government officials at all levels commit serious abuses of

their power and authority. The fact that Iran has terrorists activities, and is rampant with crime and instability. The overall deteriorating security situation in Iran, the human rights abuses, and the government corruption elevates the cause for concern in the case. The United States may face no greater challenge from a single country than from Iran.

Letters of recommendation submitted on behalf of the Applicant attest to his professional skill, team spirit and outstanding performance on the job. He is also considered forthright, honest, hardworking and easy to get along with. (See Applicant's Post-Hearing Exhibit).

Applicant's performance development summaries reflect that he has done an excellent job, exceeding expectations for his position with the company. He is a quick learner, team player, excellent communicator and self trainer. (See Applicant's Post-Hearing Exhibit).

The Applicant's Facility Security Officer indicates that from May 5, 2006 through March 8, 2007, during the period the Applicant held a security clearance, he did not have any security violations and was very conscientious in carrying out his related duties and responsibilities.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

9. *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.

Condition that could raise a security concern:

10. (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member.

Conditions that could mitigate security concerns:

11. (a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;

11. (b) the individual has expressed a willingness to renounce dual citizenship;

11. (c) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Foreign Influence

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress

i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Preference, Disqualifying Condition 10(a) *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of*

a family member applies. However, Mitigation Conditions 11(a) dual citizenship is based solely on parent's citizenship or birth in a foreign country, 11(b) the individual has expressed a willingness to renounce dual citizenship, and 11(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated also apply.

It is only by reason of birth that the Applicant is a dual citizen of Iran and the United States. At one time, he possessed a foreign passport in order to travel to Iran to visit his family members there, including his parents, who are citizens of and reside in Iran. The Applicant has since renounced his Iranian citizenship and surrendered his Iranian passport. He does not intend to return to Iran in the future. Under the circumstances of this case, I find for the Applicant under Guideline C (Foreign Preference).

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. None of the mitigation conditions apply.

The Applicant has many family members that include his mother, father, uncle, two aunts, grandparents and other extended family members who reside in Iran. He is very close to his mother and father who reside in Iran and has regular ongoing contact with them by telephone and e-mail. Although there is no evidence that any of his family members in Iran are associated in any way with the Iranian government, there is a close bond and strong evidence of affection with his immediate family. Furthermore, the Applicant's father was trained and educated as a computer engineer. He is quite capable of understanding what the Applicant does for the defense department, and he knows that the Applicant has applied for a security clearance. The Applicant's parents and grandparents have assets in Iran that the Applicant may someday inherit. Moreover, the current political situation in Iran elevates the cause for concern in this case. The possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline B. Guideline C is found for the Applicant.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant
1.b.: For the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant
Subparas. 2.b.: Against the Applicant
Subparas. 2.c.: Against the Applicant
Subparas. 2.d.: Against the Applicant
Subparas. 2.e.: Against the Applicant
Subparas. 2.f.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge