

DATE: December 11, 2007

In Re:)
)
)

SSN: -----)

Applicant for Public Trust Position)
_____)

ADP Case No. 07-05557

**DECISION OF ADMINISTRATIVE JUDGE
JOHN GRATTAN METZ, JR**

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____Applicant's application for, renewal of, and regular use of a foreign passport after becoming a naturalized U.S. citizen demonstrate foreign preference. Applicant has neither invalidated the passport nor obtained formal approval for its use. Further, Applicant is potentially subject to foreign influence because of his family contacts—his father and sister are resident citizens of Iran—and his frequent travel to Iran to address his father's health issues. Eligibility for ADP-I/II/III position denied.

STATEMENT OF THE CASE

On 9 April 1993, the Composite Health Care System Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD C³I) entered into a memorandum of agreement for DOHA to conduct trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987.

Applicant challenges the 23 August 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his trustworthiness determination because of foreign preference and foreign influence.¹ He answered the SOR 18 September 2007, and requested a hearing. DOHA assigned the case to me 22 October 2007 and I convened a hearing 28 November 2007. DOHA received the transcript (Tr.) 6 December 2007.

PROCEDURAL ISSUES

At hearing, I granted Department Counsel's motion to take official notice of certain U.S. Government publications as they pertain to Iran (Tr. 23).

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for SOR 1.a. and 1.d. Accordingly, I incorporate those admissions as findings of fact.

Applicant—a 48-year-old food service general manager employed by a defense contractor since September 1979—seeks a trustworthiness determination for access to the military installation where his company provides food services. This is his first background investigation.

Applicant was born in Iran in February 1959. He immigrated to the U.S. in about 1976 to attend college, but became a legal permanent resident of the U.S. after the royal Iranian government was overthrown in 1979. He married a native-born U.S. citizen in December 1989. They have two daughters, born May 1991 and August 1998, both born in the U.S. Applicant and his wife own their home in the U.S., and all their financial interests are here.

Although Applicant denies being a dual citizen of the U.S. and Iran, he acknowledged that Iran considers him a citizen (G.E. 1). He applied for an Iranian passport sometime before 2001, which he used to travel to Iran in 2001, 2004, and 2006. He renewed this passport in March 2007; it expires in March 2012. He intends to maintain this passport so he can travel to Iran to see his ill father, and the sister who cares for him. He has no property interests in Iran.

In his July 2007 response to DOHA interrogatories (G.E. 2), Applicant acknowledged renewal of his Iranian passport and his intent to maintain it. Applicant has not surrendered his Iranian passport, and does not intend to. Although Applicant seems to grasp the concept that he cannot travel to Iran on his U.S. passport because of the state of relations between the U.S. and Iran, and Iran's failure to

¹Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).

recognize his U.S. citizenship, he apparently fails to grasp the converse concept that he is only able to obtain an Iranian passport because Iran considers him an Iranian citizen, and that his application for an Iranian passport is an assertion of Iranian citizenship on his part. In short, he fails to see why his possession and use of an Iranian passport raises security concerns.

Iran is a fundamentalist Islamic republic with a poor human rights record. Its relations with the U.S. are confrontational and unlikely to improve given Iran's past efforts to acquire nuclear weapons, its sponsorship of, support for, and involvement in, international terrorism, and its support for violent opposition to the Middle East peace process. Nevertheless, Iran is not a known collector of U.S. intelligence or sensitive economic information, nor is it known to target U.S. citizens to obtain protected information.

Travel to Iran remains problematic. The Department of State's May 2007 Travel Warning continues to warn U.S. citizens to carefully consider the risks of travel to Iran, noting that dual national Iranian-American citizens may encounter difficulty in departing Iran. Some elements of the Iranian government and population remain hostile to the U.S. Consequently, American citizens may be subject to harassment or arrest while traveling or residing in Iran. Americans of Iranian origin are urged to consider the risk of being targeted by authorities before planning travel to Iran. In addition, Iranian authorities may deny dual nationals access to the U.S. Interests Section in Tehran, because they are considered to be solely Iranian citizens. Large-scale demonstrations have taken place in various regions throughout Iran over the past several years as a result of a sometimes volatile political climate. U.S. citizens who travel to Iran despite the travel warning are urged to exercise caution.

The U.S. government does not currently have diplomatic or consular relations with the Islamic Republic of Iran, and, therefore, cannot provide protection or routine consular services to American citizens in Iran. The Swiss government, acting through its Embassy in Tehran, serves as protecting power for U.S. interests in Iran. Neither U.S. passports nor visas to the United States are issued in Tehran. The Iranian government does not recognize dual citizenship and generally does not permit the Swiss to provide protective services for U.S. citizens who are also Iranian nationals. In addition, U.S. citizens of Iranian origin, who are considered by Iran to be Iranian citizens, have been detained and harassed by Iranian authorities.

POLICIES AND BURDEN OF PROOF

The Revised Adjudicative Guidelines list factors to be considered in evaluating an Applicant's suitability for public trust positions. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline C (Foreign Preference) and Guideline B (Foreign Influence).

Public trust determinations resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's eligibility for public trust positions. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against eligibility. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to eligibility, the Applicant bears a heavy burden of persuasion.

Persons with access to public trust information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.²

CONCLUSIONS

The government established a case for disqualification under Guideline C by showing that Applicant obtained an Iranian passport before 2001, used it to travel to Iran in 2001, 2004, and 2006, had it renewed in March 2007, and is likely to use it to travel to Iran in the future, despite becoming a naturalized U.S. citizen in the mid 1990s.³ Applicant has not mitigated the Guideline C security concerns. Although he has been a dual citizen of Iran and the United States since his birth, his Iranian citizenship would have little security significance if based solely on his parents' citizenship. For his conduct to fall within the security concerns of Guideline C, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C. The government has a compelling interest in ensuring those given public trust positions will make decisions free of concerns for the foreign country of which they may also be a citizen.

Applicant meets none of the mitigating conditions (MC) for foreign preference. His dual citizenship is not based solely on his parents' citizenship, but is based on his active exercise of dual citizenship after becoming a naturalized U.S. citizen.⁴ He has not expressed a willingness to renounce his foreign citizenship.⁵ All exercise of dual citizenship occurred after he obtained U.S. citizenship,

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³Revised Adjudicative Guidelines, ¶ 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. This included but is not limited to: (1) possession of a current foreign passport; (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

⁴Revised Adjudicative Guidelines, ¶ 11.(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

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

while he was an adult.⁶ Applicant's use of his Iranian passport has not been sanctioned by the U.S.⁷ He stated no willingness to invalidate his passport.⁸ While Applicant has a legal right to maintain his dual citizenship with its attendant benefits and responsibilities, he has not demonstrated that he can be counted on to always act in preference to the United States. I resolve Guideline C against Applicant.

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise eligibility concerns if the individual: 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.⁹ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.¹⁰

In this case, the government established a case for disqualification under Guideline B because his father and sister are resident citizens of Iran. Considering first the foreign country involved, Iran and the U.S. have strained foreign relations at best. Although Iran is not a known collector of U.S. intelligence or sensitive economic information, or known to target U.S. citizens to obtain protected information, the fact that Iran does not recognize dual citizenship and considers such citizens to be solely Iranian presents security concerns regarding his family members residing in Iran. Applicant's divided loyalties are demonstrated by his travel to Iran in 2001, 2004, and 2006 and his intent to travel to Iran when needed in the future to deal with his father's health issues.¹¹ Ordinarily, travel to a foreign country—even a country of origin—has no independent security significance, but serves to demonstrate an Applicant's ties of affection to family members residing there. However, in this case Applicant travels to Iran to care for his ill father, and subjects himself to the jurisdiction of a government that is hostile to the U.S., and considers him to be only an Iranian citizen and thus likely to be denied access to what little assistance is available to U.S. citizens through the U.S. Interests

⁶¶ 11.(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

⁷¶ 11.(d) use of a foreign passport is approved by the cognizant security authority;

⁸¶ 11.(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

⁹¶ 6.

¹⁰¶ 7.(a).

¹¹¶ 7.(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Section in Tehran. Even though Iran is not an active collector of sensitive U.S. information, an individual in Applicant's circumstances who travels to Iran is a potential target of opportunity that is an unacceptable risk of being coerced to provide information. I resolve Guideline B against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph 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 eligibility for a public trust position for Applicant. Eligibility for ADP-I/II/III position denied.

John G. Metz, Jr.
Administrative Judge