



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ADP Case No. 10-09229
)
Applicant for Public Trust Position)

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: Darin M. Groteboer, Esq.

06/18/2012

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a public trust position. The action is based on foreign preference and foreign influence concerns raised by Applicant’s dual citizenship with Iran and his family ties or connections to Iran, his country of birth. The foreign preference concern is mitigated, but Applicant did not present sufficient evidence to explain, extenuate, or mitigate the foreign influence concern. For the reasons discussed below, this case is decided against Applicant.

Statement of the Case

Applicant submitted an application for a public trust position in March 2010.¹ On September 28, 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a statement of reasons (SOR) detailing trustworthiness concerns under Guideline B for foreign influence and Guideline C for foreign preference. The action was taken under Executive Order 10865, *Safeguarding Classified Information with Industry* (Feb. 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)² implemented by the Defense Department on September 1, 2006. The SOR recommended submission of Applicant's case to an administrative judge to determine his eligibility to occupy an automated data processing (ADP) position designated I, II, or III to support a Defense Department contract.

Applicant answered the SOR on February 1, 2012, and requested a hearing. The case was assigned to me March 16, 2012. The hearing took place May 2, 2012. The hearing transcript (Tr.) was received May 10, 2012.

At the close of the hearing, I kept the record open to allow Applicant to provide additional documentary information. On May 14, 2012, Applicant made a timely submission, and that document is admitted, without objections, as Exhibit D.

Procedural Matters

Without objections, I took administrative or official notice of certain facts concerning the country of Iran per Department Counsel's written request.³ The essential facts about Iran are set forth below.

Findings of Fact

The gravamen of the SOR is as follows: (1) under Guideline B, Applicant is subject to a foreign influence concern because of his family ties to Iran; and (2) under Guideline C, Applicant is subject to a foreign preference concern because he exercised and benefitted from his Iranian citizenship by obtaining an Iranian passport in 2007 after becoming a U.S. citizen and using that passport to travel to Iran in 2007. His answer to the SOR was mixed, with admissions, denials, and brief explanations. His admissions to the factual allegations and brief explanations are accepted and adopted and

¹ Exhibit 1.

² The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

³ Appellate Exhibit I.

incorporated herein as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 55-year-old self-employed subcontractor who is working for a contractor to a Defense Department data center. His educational background includes a bachelor's degree in computer science awarded in 1993 from a state university located in the United States. He has been operating his own software engineering and consulting business since 2010. He is applying for ADP eligibility to obtain access to sensitive but not classified information known as personal identification information (PII).

Applicant is a native-born citizen of Iran. He came to the United States in 1979 around the time of the fall of the Shah of Iran. Traveling on a student visa, he enrolled at a state university. He was forced to drop out of the university in 1979 or 1980, when he was unable to receive money from Iran due to events that were then occurring in that country. Applicant's immigration status changed to illegal resident alien, and he worked various odd jobs to support himself. In 1984, relatives in another state persuaded him to live with them, and so, he relocated to that state. Through an amnesty program at the time, Applicant was allowed to apply for legal resident alien status, which was granted shortly before he enrolled at another state university in 1988. He completed a bachelor's degree there in 1993. He obtained U.S. citizenship through the naturalization process in 2000.

Applicant has held an Iranian passport at various times since his arrival in the United States 33 years ago. Until becoming a U.S. citizen in 2000, it was his only passport. He applied for and obtained an Iranian passport for his first trip to Iran in 1997, as his previous passport had expired. He used an Iranian passport to make a second trip to Iran in 2000. He renewed the Iranian passport in 2007 and used it to travel there in 2007.⁴ He has used a U.S. passport for other foreign travel.⁵ The purpose of all three trips to Iran was to visit family and relatives. He does not intend to travel to Iran in the future.⁶ The Iranian passport obtained in 2007 expired in March 2012,⁷ and he does not intend to renew it.⁸ He also expressed a willingness to renounce his Iranian citizenship.⁹

Applicant married in 2002, and the couple has an eight-year-old child. His wife, like him, is a dual citizen of the United States and Iran, obtaining U.S. citizenship in

⁴ Exhibit 2.

⁵ Exhibit 2.

⁶ Tr. 67.

⁷ Exhibit 2.

⁸ Tr. 71, 106.

⁹ Tr. 106.

2008.¹⁰ He met his wife while in the United Kingdom (UK) when he was introduced to her by her sister. Trained as a clinical psychologist, his spouse has not been employed outside the home during their marriage. She and her son travel regularly to Iran, about every other year, during the summer to visit family and relatives.¹¹ They typically stay about two months during these trips. She and her son stay with her mother and father. The most recent trip was during May–July 2011. In addition to the trips, his wife talks with her mother by telephone about once a week or so; she speaks with her father on occasion. Other than a sister in the UK, her parents and siblings are citizens of and residents in Iran.

In addition to his wife and son, Applicant’s immediate family no longer lives in Iran except for one sister, and she is pending immigration to the United States. His father passed away many years ago. The table below summarizes the relevant facts concerning his mother and three siblings.

Mother–84 years old.	A retired housewife, she is an Iranian citizen and U.S. resident alien who lives with Applicant, although she travels and stays with her other children too. (Exhibit D).
Brother–47 years old.	A freelance architect, he is a citizen of and resident in Canada. (Exhibit A)
Sister–60 years old.	A citizen and resident of Iran, she is pending immigration to the United States as the unmarried daughter of Applicant’s mother. (Exhibit C). She will live with Applicant.
Sister–66 years old.	A retired housewife, she is a citizen of and resident in Canada.

All of Applicant’s financial interests are in the United States. Applicant and his wife own a home, although it is being used as a rental property. They are renting a home, as they relocated to their current state of residence for Applicant’s employment. He has no financial interests in Iran or any other foreign country.

Concerning Applicant’s country of birth, the February 1979 fall of the Shah of Iran, then a key U.S. ally, opened a long rift in relations between Iran and the United States that continues to this day. On November 4, 1979, radical students seized the U.S. Embassy in Tehran, and then held hostages until shortly after President Reagan’s inauguration on January 20, 1981. The United States severed relations with Iran in

¹⁰ Exhibit 4.

¹¹ Exhibit B.

1980, and the two countries have had no official dialogue since. In the United States, the Iranian Interest Section is located in the Embassy of Pakistan. The U.S. protecting power in Iran is Switzerland. The U.S. Government has designated Iran as a state sponsor of terrorism, and it has special concerns about four particular areas of Iranian behavior: (1) its efforts to acquire weapons of mass destruction (e.g., its nuclear program); (2) its support of and involvement with terrorism; (3) its support of violent opposition to the Middle East peace process; and (4) its dismal record of human rights. Because Iran does not recognize dual citizenship, Iranian-born-naturalized U.S. citizens are considered solely Iranian citizens by Iranian authorities, and they are required to enter and exit Iran using an Iranian passport. When in Iran, they may be subject to surveillance, search, harassment, arrest, and detention or imprisonment.

Discussion

In analyzing this case, I have considered several factors as most probative: (1) Applicant was in possession of a current Iranian passport until it expired in March 2012; (2) he used an Iranian passport to travel to Iran in 1997, 2000, and 2007 for family visits; (3) he does not intend to travel to Iran in the future; (4) he does not intend to renew the expired Iranian passport; (5) Applicant's spouse is a dual-citizen of Iran and travels there, with their son, using an Iranian passport; (6) Applicant has relatively strong family ties to Iran through his sister in Iran and through his wife's immediate family members in Iran; and (7) Iran is ruled by an authoritarian government that is hostile to the United States. With these factors in mind, it is appropriate to address the particular adjudicative guidelines.

Under Guideline C for foreign preference,¹² the suitability the suitability of an applicant may be questioned or put into doubt due to an applicant's foreign preference. The overall concern under the guideline is:

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.¹³

Given the evidence of Applicant's past exercise of Iranian citizenship by possession of a current Iranian passport, the Government has established its case under Guideline C. In reaching this conclusion, I considered the following disqualifying condition:

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

¹² AG ¶¶ 9, 10, and 11 (setting forth the security concern and the disqualifying and mitigating conditions).

¹³ ¶ AG 9.

of a family member. This includes but is not limited to: (1) possession of a current foreign passport.

The guideline also provides that certain facts and circumstances may mitigate foreign preference concern. I have considered all the mitigating conditions as follows:

AG ¶ 11(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

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

AG ¶ 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;

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

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

AG ¶ 11(f) the vote in a foreign election was encouraged by the United States Government.

The mitigating conditions at AG ¶¶ 11(b) and (e) apply in Applicant's favor. At the hearing, Applicant was unequivocal in expressing a willingness to renounce his Iranian citizenship and an intent not to renew his Iranian passport, which is now expired. Given the totality of the evidence, including his 33 years of residence in the United States and his record of education and employment here, the foreign preference concern is mitigated under AG ¶¶ 11(b) and (e).

Under Guideline B for foreign influence,¹⁴ the suitability of an applicant may be questioned or put into doubt due to an applicant's foreign connections and interests. The overall concern under the guideline is:

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

¹⁴ AG ¶¶ 6, 7, and 8 (setting forth the security concern and the disqualifying and mitigating conditions).

States citizens to obtain protected information and/or is associated with a risk of terrorism.¹⁵

Given the evidence of Applicant's family ties to Iran, a country that is hostile to the United States, the Government has established its case under Guideline B. In reaching this conclusion, I considered the following disqualifying condition:

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

The guideline also provides that certain facts and circumstances may mitigate foreign influence security concern. Given the evidence, I have considered the following mitigating conditions as most pertinent:

AG ¶ 8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States; and

AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant has all the indicators of a mature, stable, responsible, and trustworthy person. He was both serious and credible at the hearing. Nevertheless, Iran's hostility to the United States and the heightened risk it creates place a heavy burden on Applicant to show his family ties to Iran are mitigated. The evidence shows he has relatively strong ties to Iran. The best evidence on this point is (1) his travel to Iran to visit family and relatives, (2) his assistance in helping his sister immigrate to the United States from Iran, and (3) his wife's regular travel to Iran to visit her family and relatives, which is imputed to him via their marriage. All of these demonstrate the strength of his family ties. With that said, I have no concern about his mother, brother, and sister who no longer live in Iran and now live in democratic countries governed by the rule of law. Likewise, I have no concern about his past travel to Iran, which took place years before he applied for an ADP position, and which he intends not to undertake in the future. Considering the evidence as a whole, including his wife's intent to travel to Iran to visit family and relatives and the risks associated with that travel, I cannot conclude that it is unlikely that Applicant will be placed in a position of compromise or conflict in a security

¹⁵ AG ¶ 6.

context. The situation in Iran is too uncertain and unstable and risky to reach that conclusion. Accordingly, the foreign influence concern is not mitigated under AG ¶¶ 8(a) and (b).

To conclude, the record evidence leaves me with doubt about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated foreign preference concern, but he did not mitigate the foreign influence concern.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline B:	Against Applicant
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant (brother)
Subparagraph 1.b:	Against Applicant (sister)
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline C:	For Applicant
Subparagraphs 2.a–2.b:	For Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant eligibility for an ADP I, II, or III position. Eligibility for access to sensitive information is denied.

Michael H. Leonard
Administrative Judge