

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: The Applicant has surrendered his Iranian passport. He has lived in the U.S. for nearly 33 years, and has been U.S. citizen for more than 20 years. He is married to an American, and his two children who are native born Americans. All of his family members, except for a father-in-law that the Applicant has never met or spoken to, reside in the U.S. As the Applicant has “longstanding relationships and loyalties in the U.S.,” it is unlikely that he “will be placed in a position of having to choose between the interests of . . . [his foreign relative] . . . and the interests of the U.S.” Mitigation is shown. Clearance is granted.

CASENO: 06-25226.h1

DATE: 08/29/2007

DATE: August 29, 2007

In Re:)	
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-----)	ISCR Case No. 06-25226
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
RICHARD A. CEFOLA**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has surrendered his Iranian passport.¹ He has lived in the U.S. for nearly 33 years, and has been U.S. citizen for more than 20 years. He is married to an American, and his two children who are native born Americans. All of his family members, except for a father-in-law that the Applicant has never met or spoken to, reside in the U.S. As the Applicant has “longstanding relationships and loyalties in the U.S.,” it is unlikely that he “will be placed in a position of having to choose between the interests of . . . [his foreign relative] . . . and the interests of the U.S.” Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On February 16, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 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.

Applicant filed an Answer to the SOR on March 12, 2007.

The case was received by the undersigned on April 2, 2007. A notice of hearing was issued on April 17, 2007, and the case was heard on May 8, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on May 17, 2007. The issues raised here are whether the Applicant's perceived Foreign Preference and Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 53 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional Findings of Fact.

Guideline C - Foreign Preference

The Applicant has lived in the U.S. for nearly 33 years, since September of 1974 (TR at page 15 lines 5~9). He came to the U.S., as his brother “was living here already for 10 years” (TR at page 15 lines 10~13). He was naturalized as a U.S. citizen in 1985, more than 20 years ago (TR at page 15 line 20 to page 16 line 3, and Government Exhibit (GX) 1 at page 1). The Applicant is married to an American, and his two children are native born Americans (TR at page 18 line 25 to page 20

¹Dual citizenship is not alleged in the Statement of Reasons.

line 23) The Applicant's parents and siblings all reside in the U.S. (TR at page 14 line 6 to page 17 line 5, and GX 1 at pages 3~4). His net worth of about \$600,000~\$700,000 is all in the U.S. (TR at page 21 lines 7~17).

1.a. and 1.b. The Applicant has surrendered his Iranian passport, which he never used to travel (TR at page 23 line 13 to page 25 line 8, and Applicant Exhibit (AppX) B).

Guideline B - Foreign Influence

2.a. The Applicant has never met or spoken to his 80 year old father-in-law, who resides in Iran (TR at page 25 line 9 to page 26 line 9). His father-in-law is "hard of hearing;" and as such, the Applicant is unable to speak "to him on the phone" (*Id*). The Applicant is not subject to coercion vis-a-vis his father-in-law (TR at page 23 lines 8~12).

As the Applicant has an Iranian in-law, I must also consider the country of Iran. Iran is a state that sponsors terrorism. The U.S. has not had diplomatic relations with Iran since 1980. It is a theocratic Islamic republic in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. Iran's dismal and worsening human rights record presents a further threat to the U.S., as a large number of Iranians emigrated to the U.S. in 1979, after their Islamic revolution. These immigrants often left behind family members in Iran. Iran's security forces often target family members of political prisoners for harassment purposes.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an 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 has demonstrated a Foreign Preference or who is subject to Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. 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

The Applicant, until recently, maintained an Iranian passport. The first disqualifying condition under Foreign Preference is therefore applicable as there was an "exercise of any right . . . of foreign citizenship after becoming a U.S. citizen . . . This includes but is not limited to: (1) possession of a current foreign passport; . . ." This is countered, however, by the fifth mitigating condition. "[T]he passport has been . . . surrendered to the cognizant security authority . . ."

The Applicant's father-in-law is a citizen of and resides in Iran. The first and second disqualifying conditions under Foreign Influence are arguably applicable as this contact "creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," and creates "a potential conflict of interests between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person . . . by providing that information." Under the facts of this particular case, however, these are clearly countered by the first and second mitigating conditions. The nature of the Applicant's relationship with his father-in-law, whom he has never even met, is "such that it is unlikely the individual will be placed in a position of having to choose between the interests of . . . [his father-in-law] and the interests of the U.S." Also, the Applicant "has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest."

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. His present supervisor, and two former supervisors, aver that he is "highly responsible" and/or "trustworthy" (AppX A). The totality of the Applicant's conduct and circumstances, as set forth at length above, clearly warrants a favorable recommendation under the "whole person concept." Mitigation is shown. Guidelines B and C are found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his perceived Foreign Preference and Foreign Influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Foreign Preference FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Paragraph 2: Foreign Influence FOR THE APPLICANT

- a. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola
Administrative Judge