

DATE: December 31, 2007

---

In Re: )  
 )  
 )  
----- ) ISCR Case No. 07-01223  
SSN: ----- )  
 )  
Applicant for Security Clearance )  
 )  
 )

---

**DECISION OF ADMINISTRATIVE JUDGE  
PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Stephanie A. Hess, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has successfully mitigated the foreign preference concerns triggered by her use and renewal of a foreign passport after she received her United States (U.S.) citizenship and passport. In addition, her omission of material information from her security clearance application resulted from misunderstanding the question asked rather than a deliberate attempt to cover up her trip to Iran in April 2002. But Applicant has not successfully mitigated the foreign influence security concern caused by her family ties in Iran. Clearance is denied.

**STATEMENT OF THE CASE**

On August 13, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, and partially modified by revised adjudicative guidelines (AG) made effective on September 1, 2006, issued a Statement of Reasons (SOR) to the Applicant. The SOR indicated that based on foreign influence (Guideline B), foreign preference (Guideline C), and personal conduct (Guideline E), DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On August 27, 2007, Applicant provided her answer to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on October 18, 2007. On October 24, 2007, this case was set for hearing on November 14, 2007. The government submitted five exhibits (GE 1-5), and Applicant submitted two exhibits (AE A-B). Testimony was taken from Applicant and three witnesses. The transcript was received on November 28, 2007.

## **FINDINGS OF FACT**

Applicant admitted the four allegations under paragraph 1 (foreign influence) and two allegations under paragraph 2 (foreign preference). She denied the falsification allegation under paragraph 3 (personal conduct) explaining that the missing information appeared under another question in the security clearance application (SCA).

### **Foreign Influence**

Applicant is 44 years old, and began working in August 2005 as a software engineer for her current employer. She was promoted to her current position as task leader. Also, she has been an instructor of a local university since February 2005. Applicant was born in Iran in 1963. Shortly after birth, her parents took her to the United Kingdom where she lived with her father while he continued his education. When she was five years old, her mother developed pregnancy complications with Applicant's unborn brother, and the family returned to Iran for medical attention, and to provide care for Applicant's grandmother. At a later point (year not disclosed) in her life, she visited the United States (U.S.) for a period while her father completed his veterinarians' degree.

In 1989 or 1990, when Applicant was 26 or 27 years old, her parents persuaded her to move to France to live with a family friend as they realized she was having problems adjusting to the Iranian way of life. She met her soon-to-be husband in France, and they moved to the U.S. in May 1990. They were married in June 1990. She gave birth to two children during their marriage that lasted until September 2002. Applicant became a naturalized U.S. citizen in September 1994 and received U.S. passport in October 1996. In December 2003, Applicant obtained a graduate degree in management and information from a U.S. university, after having received an undergraduate degree in engineering from a U.S. university.

Applicant's sister, grandmother, and aunt are resident citizens of Iran (subparagraph 1.a. of the SOR). Her sister, 45 years old, is a retired nurse. In the 17-year-period Applicant has been in the U.S., her contact with her sister has decreased from twice a year to sporadic.

Applicant speaks to her 86-year-old grandmother about twice a year. Before the grandmother retired, she was a math teacher at a private, high school. She supplemented her income as a tutor. The grandmother has not initiated the emigration process to live with Applicant because she does not want to be a burden. Applicant's aunt (his mother's sister) 64 years old, is a citizen of Iran residing with Applicant's cousin in the western U.S. Occasionally, the aunt returns to Iran to visit Applicant's grandmother.

Applicant's brother, a 37-year-old engineer, is a citizen of Iran, and was residing at a university in the northeastern part of the U.S. (subparagraph 1.b.) until November 2007, when he moved to the south-central U.S. He has applied for U.S. citizenship and is awaiting his interview. He used to travel to Iran occasionally to see their grandmother, but has not been to the country since his marriage in April 2002.

Applicant's parents are dual citizens of Iran and the U.S., residing with Applicant in the U.S. They are dual citizens as the government of Iran does not recognize U.S. citizenship. His mother was born in Iran, and was a homemaker all her life. She is 66 years old. She became a naturalized U.S. citizen in September 2001. Applicant's father was born in Iran in 1927. He is a retired veterinarian. He became a naturalized U.S. citizen in May 2001. Both parents have lived with Applicant since about 2002. Both parents have returned to Iran on occasion to visit Applicant's grandmother. Applicant's mother has visited Iran six or seven times since 1992. Applicant's mother and father do not travel together as one usually remains to babysit Applicant's two children.

Subparagraph 1.d. of the SOR alleges Applicant traveled to Iran in April 2002 and May 1996. In April 2002, she asked for a visa and received a passport by the Iranian authorities. In May 1996, Applicant used her Iranian passport to accompany her father back to Iran to visit a seriously ill sister before she passed away. Furthermore, Applicant needed a respite from raising two young children in a turbulent marriage while still attending school.

Regarding the subject of returning to Iran, Applicant will not return for her grandmother's funeral because her practice is not to attend funerals. Overall, Applicant's fear and distrust of the Iranian government will prevent her from going back to Iran. Applicant predicted that if the Iranian government tried to target her through detention of her mother, Applicant would report the incident to the U.S., even though her mother's dreadful position in detention would have a profound impact on her.

On September 16, 2003, Applicant was asked several questions about her ties and contacts with foreign countries or individuals. She responded:

The only persons I have sponsored into the United States have been my parents. I do not maintain contact with any other non-US citizens, inside or outside of the US. I have not been employed by any foreign governments, military, or contractors with government connections. Neither my family nor I provide financial assistance to anyone residing in a foreign country or to financial educational institutions. I do not have any financial interests in countries and do not have any financial obligations to foreign countries or persons. I do not maintain any cultural or personal ties to foreign countries. I have never had contact with anyone representing foreign organizations or governments. Neither my family or I have never been imprisoned, detained, held

captive, or had property confiscated in foreign countries. Other than my parents, I have not sponsored any foreign nationals into the US. I cannot be blackmailed, pressured, or coerced based on my foreign connections (GE 5).

In response to question 17 of GE 3 (answers to interrogatories dated April 6, 2007) Applicant was asked about her net worth. She responded that it was almost \$180,000.00, which included a home, jewelry, furniture, a Persian rug, savings account, and also taking into consideration a student and home loan. None of Applicant's family members have ever been an employee or agent of a foreign government.

### **Foreign Preference**

The foreign preference allegations center around Applicant's renewal of an Iranian passport on November 26, 2003 (subparagraph 2.a.), after she became a naturalized U.S. citizen on September 24, 1994, and obtained a U.S. passport on October 16, 1996. Having compared GE 3 with Applicant's testimony (Tr. 85-89) about the circumstances surrounding the passport renewal, it appears that Applicant was reissued her passport because Iran does not provide visas to anyone born in Iran. Applicant admitted she used her Iranian passport for entry and exit from Iran in April 2002 (subparagraph 2.b.) to attend her brother's wedding. Applicant felt obligated to attend because she is close to him, and she wanted to demonstrate her endorsement of the marriage.

In her sworn statement (GE 5) dated September 16, 1993, Applicant indicated she still had her passport and would relinquish it if necessary. Applicant made the same statement in an interview in May 2006 (adopted by her on January 19, 2007 in her answers to interrogatories). At the hearing, Applicant reiterated her position to turn over the passport because it expired in June 2007. She kept the passport for one reason:

I only kept it sir, just because I didn't want to come to you and say I put it in the trash can. I wanted – If someone wants to have the information about it I though maybe as the question [Department Counsel] asked, when did it expire, if they wanted to see anything about it, I wanted to make sure I still have to – if it's needed for any reason for this hearing. Otherwise, I have no need for it (Tr. 90).

Considering the record including Applicant's credible testimony, I find she is willing to surrender her passport.

### **Personal Conduct**

Paragraph 3.a. alleges that Applicant answered Section 18 of her April 2006 SCA falsely by not disclosing all foreign travel. Though the allegation is technically correct, a closer examination of her responses reflects she placed the missing information under Section 17: Your Foreign Activities. After answering "Yes" to the question of having an active foreign passport in the last 7 years, Applicant provided a statement in the explanation space of the module that addresses her travel to Iran in April 2002. She stated:

The dates in the dates of activity field above (3/2002 to 3/2007, Iran) are the time the passport has been active. I had no involvement or contact with any government

agency or person. I went for a short visit to attend a wedding. I asked for a visa since I am a U.S. citizen and would require a visa to travel there. They sent me a passport instead. I have thought about sending the passport back, however I was concerned that this may trigger suspicion and hassle from that government (GE 3, p. 26).

Having observed Applicant's demeanor and conduct during her testimony regarding the missing information, I find Applicant did not intend to conceal the missing information.

### **Character Evidence**

The supervisor of Applicant's division has known Applicant since July 2005 when they met at a job fair. According to the supervisor, Applicant is an exemplary employee who is dedicated to her work and who warrants a position of trust. The program manager has known Applicant professionally for about two years through their work on the same projects in different jobs. The manager believes Applicant is an excellent systems engineer who deserves to work in a position of trust. Based on conversations with her, the manager recalled her indicating she is not supportive of the Iranian government. Nor does the manager believe she could be pressured into doing something wrong. The business operations analyst has worked next to Applicant's work station for about two years. She has found Applicant to be punctual and very professional in the conduct of her job responsibilities. In observations of Applicant over the last two years, the business analyst opined that Applicant does not appear to be the type of person who could be coerced to do something she was against.

Official notice has been taken of the following informational resource material concerning Iran:

1. *Background Note: Iran*, U.S. Department of State, Bureau of near Eastern Affairs, dated June 2007;

2. *Consular Information Sheet: Iran*, U.S. department of State, Bureau of Consular Affairs, dated June 5, 2007;

3. *Travel Warning: Iran*, U.S. Department of State, Bureau of Consular Affairs, dated May 31, 2007;

4. *CRS Report for congress, Iran: U.S. concerns and Policy Responses*, Congressional Research Service, dated June 27, 2007;

5. *Country Reports on Human rights Practices - 2006: Iran*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, dated March 6, 2007;

6. *Country Reports on Terrorism 2006, Chapter 3 - State Sponsors of Terrorism Overview*, U.S. Department of State, OFFICE OF THE Coordinator for Counterterrorism, dated April 30, 2007;

7. *CRS Report for Congress: Iran's Nuclear Program: Recent Developments*, Congressional Research Service, dated March 8, 2007;

8. *The National Security Strategy of the United States of America*, President of the United States, dated March 2006;

9. *The Iranian Regime: A Challenge to the World*, U.S. Department of State, Bureau of Public Affairs, May 1, 2006;

10. *Making America Safer by defeating Extremists in the Middle East*, Statement by President of the United States, released by Office of the White House Press Secretary, August 28, 2007.

Areas of particular concern and relevant to the facts and circumstances of this case are outlined below: 1. The U.S. has had no diplomatic relations with Iran for 27 years. 2. The government of Iran is actively involved in obtaining nuclear weapons and/or weapons of mass destruction, and state-sponsored terrorism. 3. Finally, the Iranian government has a poor human rights record.

## **POLICIES**

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

### **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant’s security suitability.” ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

### **Foreign Influence (Guideline B)**

Foreign contacts and interests may be a security concern if the individual has divided loyalties, or may be manipulated to help a foreign entity in a way that is not in U.S. interests, or is vulnerable to pressure by a foreign interest.

### **Foreign Preference (Guideline C)**

Acting in way that shows a preference for a foreign country over the U.S., then he may be prone to make decisions that are harmful to the U.S.

### **Personal Conduct (Guideline E)**

Conduct involving questionable judgment, dishonesty or a lack of candor.

## **CONCLUSIONS**

### **Foreign Influence (FI)**

The FI guideline focuses on an individual's divided loyalties that may be manipulated to help a foreign entity in a way that harms U.S. interests or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this guideline should consider 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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

Applicant's sister and grandmother are resident citizens of Iran. Applicant's aunt is a citizen of Iran now living with Applicant's cousin in the U.S. In addition, Applicant's brother is a citizen of Iran living in the south central part of the U.S. FI DC 7.a. (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*) applies even though Applicant's aunt and brother are no longer residents in Iran. Applicant's aunt still occasionally travels to Iran.

Applicant's parents are dual citizens of Iran and the U.S. residing with Applicant in the U.S. FI DC 7.d. (*sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*) applies. Applicant's mother has returned to Iran on six or seven occasions and is currently in the country. Her father has traveled to Iran on several occasions also. Applicant's two trips to Iran in 1996 and April 2002 are more relevant to the FP guideline as showing a foreign preference than influence and shall be discussed under that guideline. Subparagraph 1.d. is found for Applicant.

Family contacts and ties with persons in a foreign country are not automatically disqualifying but require the applicant to present evidence in mitigation and extenuation that show she qualifies for a security clearance. Iran's enmity for the U.S. and poor human rights record place "a heavy burden of persuasion" on an applicant to show his family members do not pose a security risk. *See*, ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006)

The only mitigating condition that receives serious consideration here is FI MC 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 the foreign individual, group, organization, or government and interests of the U.S.*) Even though there is no evidence that any of Applicant's family members who are citizens of Iran are employees or agents of the government or

any foreign power, Applicant's family members in Iran are at risk of being brought under control or exploited by an Iranian intelligence service. Hence, insufficient evidence has been presented by Applicant to conclude that the positions or activities of these persons in Iran are such that it is unlikely Applicant will be placed in a position of having to choose between the family member or entity and U.S. interests.

Security concerns associated with foreign influence may be mitigated under FI MC 8.c. (*contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk of foreign influence or exploitation*). However, regarding contacts with foreign citizens who are immediate family members, there is a rebuttable presumption the contacts are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Though her contact with her sister and grandmother is limited, Applicant's evidence has not rebutted the presumption. Subparagraphs 1.a. through 1.c. and Paragraph 1 are found against Applicant.

### **Foreign Preference (FP)**

The concerns of the FP guideline are actions that denote a preference for a foreign country over the U.S. Applicant's conduct warrants the application of the FP DC 10.a.(1) (*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; including but not limited to possession of a current passport*). As set forth in 2.b., Applicant used her Iranian passport in April 2002 for her brother's wedding. This action occurred after Applicant became a U.S. citizen in September 1994 and received her U.S. passport in October 1996. Applicant engaged in additional actions showing a preference for Iran by renewing her foreign passport (2.a.) in November 2003.

The government has provided substantial evidence to establish FP DC 10.a.(1). The burden then shifts to Applicant to rebut, mitigate or explain the facts in attempting to meet her ultimate burden of persuasion of demonstrating it is clearly consistent with the national interest to grant her a security clearance. Since Applicant's actions in April 2002 and November 2003 occurred after she received her U.S. citizenship and passport, FP MC 11. c. (*exercise of the rights and privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor*) does not apply.

When Applicant provided her sworn statement in September 2003, she volunteered to relinquish her Iranian passport. The record is silent on whether she had been made aware that possessing a foreign passport and/or using the passport (April 2002) could result in denial of a security clearance. Throughout the security investigation, Applicant has restated her desire to relinquish her passport. While describing her strong beliefs not to return to Iran at the hearing, she renewed her offer to surrender her passport that had expired in June 2007. I conclude the totality of her conduct in relinquishing the passport, combined with the strong evidence of her clear preference for the U.S., as demonstrated by her U.S. citizenship for 14 years, her children's U.S. citizenship, her successful completion of undergraduate and graduate school in the U.S., and her U.S. property interests, justify formal findings in her favor under FP MC 11.e. (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) and subparagraphs 2.a. and 2.b. Paragraph 2 of the SOR is resolved in her favor.

### **Personal Conduct (PC)**

The security concern of the PC guideline is behavior that manifests poor judgment and dishonesty during the security investigation. Supplying incomplete or incorrect information on an SCA is addressed under PC DC 16.a. (*deliberate omission, concealment or falsification of relevant and material facts from a personnel security questionnaire to determine security clearance eligibility*) Unquestionably, Applicant did not include her 2002 trip to Iran in Section 18: Foreign Countries You Have Visited, in her April 6, 2005 SCA. However, I do not conclude she deliberately omitted the information. Generally, when an applicant deliberately omits information from an SCA, that information does not appear in any other area of the SCA. However, the missing information about Applicant's trip to Iran is supplied in her response to question 17 of her SCA. It is clear to me the information missing from question 18 resulted from inadvertence rather than intention. With the element of deliberateness not present in PC DC 16.a., subparagraph 3.a. and Paragraph 3 is resolved in Applicant's favor.

### **Whole Person Concept (WPC)**

In reaching my decisions under the FI, FP, and PC guidelines, I have carefully evaluated this case under the general factors of the whole person model found at pp. 18 and 19 of Enclosure 2 of the Directive. Those factors include: (1) the nature, extent and seriousness of the conduct; (2) the circumstances surrounding the conduct, including knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the extent to which the participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral factors; (7) the motivation for the conduct; (8) the potential for pressure or coercion; and, (9) the likelihood of continuation or recurrence. Applicant's praiseworthy job performance evidence from supervisors or coworkers has been considered. Applicant has mitigated the government's evidence presented under the foreign preference and personal conduct guidelines. However, given the theocratic nature of the Iranian government, where authority is vested in a few officials, combined with the Iranian government's hostile relationship with the U.S., its poor human rights record, and Applicant's contacts with immediate family members in Iran, the foreign influence concerns have not been mitigated.

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Foreign Influence, Guideline B):	AGAINST THE APPLICANT.
Subparagraph 1.a.	Against the Applicant.
Subparagraph 1.b.	Against the Applicant.
Subparagraph 1.c.	Against the Applicant.
Subparagraph 1.d.	For the Applicant.
Paragraph 2 (Foreign Preference, Guideline C):	FOR THE APPLICANT.

Subparagraph 2.a.  
Subparagraph 2.b.

For the Applicant.  
For the Applicant.

Paragraph 3 (Personal Conduct, Guideline E):

FOR THE APPLICANT.

Subparagraph 3.a.

For the 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 a security clearance for Applicant. Clearance is denied.

Paul J. Mason  
Administrative Judge