

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a United States born citizen, and her husband, two children, and other close relatives are also United States citizens. She has not acted in such a way as to indicate a possible preference for a country other than the United States. Applicant never applied for or received her own Iranian passport, but her husband did place her name on his passport. While her father-in-law and sisters-in-law are citizens and residents of Iran, a country with interests greatly inimical to the U.S., none of these family members belong to, participate in, or are active with any government agency of Iran. Applicant's strong attachment to the United States makes it highly unlikely that she would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

CASENO: 05-00939.h2

DATE: 03/22/2007

DATE: March 22, 2007

In Re:

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SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 05-00939  
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**DECISION ON REMAND OF ADMINISTRATIVE JUDGE  
MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

Robert F. Bohn, Esq.

## **SYNOPSIS**

Applicant is a United States born citizen, and her husband, two children, and other close relatives are also United States citizens. She has not acted in such a way as to indicate a possible preference for a country other than the United States. Applicant never applied for or received her own Iranian passport, but her husband did place her name on his passport. While her father-in-law and sisters-in-law are citizens and residents of Iran, a country with interests greatly inimical to the U.S., none of these family members belong to, participate in, or are active with any government agency of Iran. Applicant's strong attachment to the United States makes it highly unlikely that she would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

## **STATEMENT OF THE CASE**

On September 30, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) to the Applicant which detailed 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked.

Applicant filed a notarized response, dated November 14, 2005, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

On December 28, 2005, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on January 5, 2006, and the hearing was held on January 23, 2006.

At the hearing, Department Counsel offered thirteen documentary exhibits (Exhibits 1 through 13) and no witnesses were called. Applicant offered twenty one documentary exhibits (Exhibit A through U) at the hearing, and offered her own testimony.

All of the documents were entered into evidence without objection. The transcript (Tr) was received on February 2, 2006.

The Government appealed my original decision, which was dated March 31, 2006. The Appeal Board remanded that decision and instructed me to consider all the record evidence, and make "more complete factual findings" primarily "about the nature of the Iranian Government." This has been done in this remand decision. The remand was assigned to me on March 14, 2007.

## **FINDINGS OF FACT**

The SOR contains two allegations, 1.a., and 1.b., under Foreign Preference (Guideline C) and

six allegations, 2.a. through 2.f., under Foreign Influence (Guideline B). Applicant admitted SOR allegations 2.b. through 2.f. with explanations, and she denied 1.a., 1.b., and 2.a. The admitted allegations are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 53 year old employee of a defense contractor, and she seeks to retain a DoD security clearance in connection with her employment in the defense sector.

Applicant was born in the United States to United States born parents. She received all of her education, including a Bachelor and Masters of Science, and a Ph. D. degree in Computer Engineering, from United States universities. Her husband, whom she married in 1973, is of Turkish descent. He was born in Iran, and became a United States in 1983. Applicant and her husband have two children, who were born in the United States and are U. S. Citizens.

Applicant's mother and two brothers are also natural born United States citizens, and they reside in the United States. Applicant's father is deceased.

#### **Paragraph 1 (Guideline C - Foreign Preference)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has acted in such a way as to indicate a preference for another country over the United States. While Applicant testified that Iran may consider her a citizen of Iran, because she is married to an individual who was a citizen of Iran, she does not consider herself a citizen of Iran. She denied that she had ever taken any affirmative step to be considered an Iranian citizen.

The SOR alleges that Applicant applied for an Iranian passport on August 7, 1996, and then renewed her Iranian passport on March 1, 2002, even though she was a United States citizen by birth. Applicant denied that she ever applied for or possessed an individual Iranian passport. When she traveled to Iran with her husband, the names of Applicant and her daughters were added to his passport, and that was what was used to enter and exit Iran.

When Applicant's husband became aware that his Iranian passport was an issue of security concern and significance for Applicant, he tore it up and discarded it.

Applicant indicated that she would be willing to renounce her Iranian citizenship, even though she does not consider herself an Iranian citizen.

#### **Paragraph 2 (Guideline B - Foreign Influence)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has immediate family members or people to whom she may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

The first allegation in this paragraph is that Applicant has a son-in-law, who is an Iranian citizen, residing in India. Applicant denied this allegation, since her daughter is now divorced from this individual, who resides in either Iran or Germany, and neither she nor her daughter have any contact with him.

Applicant's niece, a citizen of Iran, resided with Applicant in the United States from 1999 to 2001. She no longer resides with Applicant, but she does reside in the United States. She is in the process of becoming a United States citizen, and she plans to remain in this country.

Applicant has a father-in-law, who is a citizen and resident of Iran. He also has permanent residency status in the United States. He owns a private company, not associated with the Iranian Government. She maintains no contact with him, and she last spoke to him in 2002. Her father-in-law did visit the United States in 2005, but she neither saw him, nor spoke to him when he was here.

Applicant's husband has three sisters and one brother. Applicant's brother-in-law is now a United States citizen residing in the United States with his wife and children. One sister-in-law resides in the United States and is the process of becoming a United States citizen. Her husband is a United States citizen. Applicant's other two sisters-in-law both reside in Iran and Germany. Neither they nor their spouses work for the Iranian Government. Applicant maintains no regular contact with any of her relatives in Iran.

Applicant traveled to Iran in 1998, 1999, and 2002. The first visit was to visit her father-in-law and to honor her mother-in-law who had died one year previously. The trip in 1999 was for a ceremony of her daughter, who was marrying an Iranian man, whom she had met during their 1998 trip. The final trip was to see her grandchild who had been born in Iran. During all of her trips to Iran she complied with all the security regulations of her employer. Now that all of Applicant's immediate family is in the United States and she is aware of the security concerns, it is her intention to never return to Iran.

Applicant had also lived in Iran with her husband from 1976 to 1979, while he fulfilled his service obligation to the country by teaching at a university. She also worked as a teacher while they were in Iran.

Neither Applicant nor her husband own any property or other assets or stand to inherit any assets in Iran. They have a home which they value at \$2 million and other significant assets in this country.

### **Current Status of Iran**

In writing my initial decision, I considered all of the evidence presented in the case regarding the current status of Iran, and how it may affect Applicant. In my decision I wrote that because, "Iran, [is] a country which is undisputedly hostile to the Government of the United States, Applicant has a very heavy burden of showing that these family members do not pose a security risk." This remand decision will discuss in more detail the current nature and extent of the Iranian Government, especially as it relates to the United States.

Currently, Iran is considered one of the most dangerous adversaries to the interests of the

United States. The U.S. has not had diplomatic relations with Iran since April 7, 1980, following the November 1979 Iranian student occupation of the American Embassy in Tehran and the hostage taking of 52 Americans, which was supported by Ayatollah Ruhollah Khomeini, Iran's leader at the time.

The United States Government's concerns with Iran's policies include, but are not limited to the following: (1) its clandestine efforts to acquire nuclear weapons of mass destruction, (2) its sponsorship of international terrorism, (3) its intervention into the internal affairs of Iraq, (4) its aggressive efforts to undermine the Middle East peace process, and (5) its human rights violation against its own people. As a result of these concerns, the U.S. prohibits most trade with Iran.

### **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2.

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### **Burden of Proof**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

### **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guidelines C and B:

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

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant argues credibly that she never took any affirmative action to be considered an Iranian citizen and therefore, she does not consider herself an Iranian citizen. She never applied for or possessed her own Iranian passport. Her husband, who already possessed an Iranian passport, added the names of Applicant and their daughters to his passport. Her husband has destroyed his Iranian passport, and neither of them has any intention of traveling to Iran again.

In reviewing the Disqualifying Conditions (DC) under Guideline C, I do not find that any applies because Applicant never acted in such a way as to indicate a preference for Iran over the United States. She never applied for or possessed her own Iranian passport, nor took any other steps to assert an Iranian or dual citizenship. Mitigating Condition (MC) (E2.A3.1.3.4.), a stated willingness to renounce dual citizenship, could be argued to apply, although Applicant does not consider herself an Iranian citizen. I resolve Paragraph 1, Guideline C for Applicant.

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

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of foreign influence. As Applicant's in-laws are citizen and resident of Iran, a country which is undisputedly hostile to the Government of the United States, Applicant has a very heavy burden of showing that these family members do not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002).

The Iranian citizenship of members of Applicant's immediate family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001). This Applicant has done.

The evidence of existence of Applicant's father-in-law and sisters-in-law, who are citizens and residents of Iran, comes within DC (E2.A2.1.2.1.), an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

As stated above, I have considered the country involved in this case in making my original decision and in this remand. Iran, with an interest greatly inimical to the United States, must be scrutinized in great detail. However, the connection between Applicant's family in that country and Applicant is minimal. As discussed above, Applicant's only relatives in Iran are her father-in-law and her two sisters-in-law, both of whom reside part time in Germany. Applicant's contact with all three is extremely limited, as she never communicates with any of them by telephone, and she last saw them in 2002. What is extremely telling, as to a lack of closeness between Applicant and her father-in-law, is that when her father-in-law visited the United States in 2005, she neither saw nor spoke to him. While I certainly considered in my original decision and continue to understand that Iran, which engages in human rights violations, could potentially place threats against Applicant's father-in-law in an attempt to coerce Applicant, the evidence strongly suggests that no such threat would cause Applicant to act in a way that would be contrary to the interest of the United States.

The primary factors in mitigation that I have considered include the following: Applicant was born in the United States to United States citizens; all of her close family members, including her husband, her two daughters, her granddaughter, her mother, and her two brothers are citizens and residents of the United States; she has had minimal contacts and closeness with her in-laws in Iran, who have no Iranian government involvement; her long and successful employment history in the United States; her significant financial interests in the United States; and her stated intention not to cooperate with any potential threat to her in-laws in Iran.

Based on the nature of the overall record and the totality of the evidence, I have determined that her family in Iran does not constitute an unacceptable security risk, and Mitigating Condition (MC) E2.A2.1.3.1, "a determination that the immediate family member(s) . . . in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States," applies.

After considering all of the evidence of record on the issue of Foreign Influence, I resolve Paragraph 2, Guideline B for Applicant.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are

hereby rendered as follows:

**Paragraph 1. Guideline C: FOR APPLICANT**

Subparagraph 1. a.: For Applicant

Subparagraph 1.b.: For Applicant

**Paragraph 2. Guideline B: FOR APPLICANT**

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

**DECISION**

In light of all 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 Applicant.

**Martin H. Mogul**  
**Administrative Judge**