

KEYWORD: Foreign Influence, Foreign Preference; Personal Conduct; Criminal Conduct

DIGEST: Applicant did not respond truthfully to questions on two Security Clearance Applications. She also made false, material misrepresentations in a signed, sworn statement she gave to the Defense Security Service (DSS). Clearance is denied.

CASENO: 05-14488.h1

DATE: 02/26/2007

DATE: February 26, 2007

In Re:)	
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-----)	ISCR Case No. 05-14488
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JOSEPH TESTAN**

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Department Counsel

FOR APPLICANT

Thomas M. Abbott, Esq.

SYNOPSIS

Applicant did not respond truthfully to questions on two Security Clearance Applications. She also made false, material misrepresentations in a signed, sworn statement she gave to the Defense Security Service (DSS). Clearance is denied.

STATEMENT OF THE CASE

On May 18, 2006, 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, (as administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on June 24, 2006. The case was assigned to the undersigned on August 4, 2006. A Notice of Hearing was issued on January 11, 2007, and the hearing was held on January 18, 2007. The transcript was received on January 29, 2007.

FINDINGS OF FACT

Applicant is 51 years of age. She has been employed by the same defense contractor since 1988.

Applicant was born and raised in Iran. In 1979, she left Iran and moved to the United States to join her fiancé who was teaching at a university. They intended to return to Iran to get married, but their plans changed when the Iranian Revolution occurred. Because her fiancé was Jewish, they decided it was in their best interests to remain in the United States. They were married in the United States in 1979. She became a United States citizen, and obtained a United States passport, in 1985. They had two children. The children, United States citizens by birth, are now adults and live in the United States. Applicant and her husband divorced in 1997. Her former husband, a naturalized United States citizen, resides in the United States.

Applicant's parents passed away in 2002. She has two siblings. Her older brother is a citizen and resident of the United States. Her other brother, who is about 16 years her junior, is a citizen and resident of Iran. He is married and has one child. Because of their age difference, applicant never had a close relationship with this brother. They communicate by telephone a few times a year. Applicant has no assets in Iran. She has substantial assets in the United States. Since moving to the United States, applicant has intended to make the United States her permanent home.

Applicant has traveled to Iran three times since moving to the United States. These three trips took place in 1994, 1996, and August 2002. The first two trips were to visit her elderly parents and/or grandmother. The third trip was to visit the grave sites of her parents.¹ Applicant testified that prior to her first trip, she contacted Iranian authorities working out of a third country's embassy, and

¹ Now that her parents have passed away, and she has visited their grave sites, applicant has neither the need nor the desire to make any further trips to Iran. During this last trip, she signed over any rights she may have had in her parents' property to her brother.

explained to them that she was a United States citizen who needed an Iranian visa to visit Iran. She further testified that after she mailed her expired Iranian passport back to the Iranian authorities, she received back from them the Iranian passport she had sent to them (with a hole punched into it to invalidate it) (Exhibit Y) and an Iranian document (Exhibit AA). She further testified that because the document was marked "Passport," she became confused and called the Iranian officials who assured her that the document she received was a visa, not a passport (TR at 32, 35-36). Because by the terms of the document she could not stay longer than four months in Iran, applicant accepted their explanation that it was a visa and not a passport. Applicant used a similar document to travel to Iran in 1996 and 2002. As will be explained more fully below, the documents were passports, not visas, and applicant's testimony that she did not think they were passports was not credible. In January 2007, applicant mailed the documents back to the Iranian interest section of a third country's embassy along with a cover letter renouncing any Iranian citizenship that Iran "may view her to possess"(Exhibit X).

Applicant completed an SCA that she caused to be electronically submitted on or about October 9, 2002. (Exhibit 19). On said SCA, applicant responded "no" to the following question: "15. In the last 7 years, have you had an active passport that was issued by a foreign government?" Applicant's response was false because, as noted above, at the time she executed the SCA, she had been in possession of an active Iranian passport during the previous seven years. Applicant's explanation that she responded "no" because she believed she had been issued and had used Iranian visas, not Iranian passports, offered for the first time at the hearing, was not credible for at least three reasons: First, the documents are clearly labeled "passport." Second, in her interrogatory answers of March 2006 (Exhibit 3), she clearly stated she traveled to Iran on Iranian passports, and added that she "will be happy to dispose of the Iranian passports in any way requested by your office." Third, in her response to the SOR, applicant admitted that the Iranian Consulate had issued her passports. Specifically, in pertinent part she stated: "I admit that I applied for a visa to travel to Iran [in 1994, 1996 and 2002]. The Iranian consulate issued me a passport, since I was born there, even though I had informed them that I am seeking a Visa with my American passport." I find that applicant intentionally provided the false information on the SCA.

On the same SCA, applicant intentionally falsified material facts when she failed to disclose her 1996 and August 2002 trips to Iran in response to the following question: "16. Have you traveled outside the United States on other than official U.S. Government orders in the last 7 years?" Applicant denies any intent to conceal these trips from the Government. At the hearing she offered the following explanation: In May or June 2002, she was asked to complete an SCA. While going through the SCA, she came to Question 16 and disclosed her trips to other countries in 2000 because this information was fresh in her mind. However, because she was uncertain about the dates she traveled to Iran, she left the question with the intention of researching the dates of her Iranian trips and then returning to the question. She never got around to it and must have made an honest mistake and forgot about it because she ended up signing the SCA in July 2002 without disclosing any travel to Iran.² This first SCA was rejected by DoD and returned to applicant's employer's security department in September 2002 (Exhibit K). In October 2002, applicant was informed that she had to resubmit her SCA. She asked the security department how this new SCA differed from the SCA

²In a signed, sworn statement she gave to the DSS in June 2003, she stated she did not disclose her 1996 trip to Iran on "the security form" because she thought it "had occurred after the seven year time limit" (Exhibit 10).

she completed earlier that year and was told all she had to do was sign it again. So she did, without remembering she had not revisited Question 16, and without remembering that she had just visited Iran two months earlier. Applicant's denial of an intent to deceive was not credible.

Applicant intentionally falsified material facts on a second SCA that she executed on March 17, 2003 when she again denied having an active foreign passport issued within the last seven years and again failed to disclose her 2002 trip to Iran. Applicant denies any attempt to deceive. She testified that in late 2002 she was informed she had to complete a new SCA because her clearance was being upgraded. She asked if this new SCA was different from the SCA she recently completed and was told "only if you have got married or you have had a child or there has been a death in the family." Since these events had not occurred, she figured her old SCA was good so she went to the security office and just signed the form containing the same information from October 2002. She had completely forgotten about the Iranian travel in August 2002 (TR at 57). Applicant's denial of an intent to conceal her travel to Iran, and her possession of an active Iranian passport, was not credible.

As noted above, applicant provided a signed, sworn statement to the DSS in June 2003. In it, she made the following statement: "I had a three year Iranian passport when I first came to the US which has since expired and my current US passport has expired. I obtained my 1978 expired Iranian passport prior to becoming a US citizen in 1985. My US passport (which just expired on 14 Apr 03) is the only document I have used and intend to use for all travel outside the US. I plan on renewing my US passport in the future." This statement was false and misleading in two material respects. First, applicant's original three year Iranian passport may have expired; however, she renewed it and possessed an active Iranian passport during her three trips to Iran in 1994, 1996 and 2002. Second, even if she used her United States passport on her trips to Iran as she claims, by her own admission, she used another document in conjunction with the United States passport to enter and exit Iran; namely, the Iranian supplied document.³

Applicant testified that she informed her employer's security department each time she traveled to Iran. Although no documentation from her employer corroborates this testimony, applicant did offer affidavits from two coworkers. The first coworker states that he worked with applicant from 1988 to 1998, and although he cannot recall the dates, he remembers applicant openly discussing her trips to Iran during that time (Exhibit W). The second coworker states he was applicant's supervisor from 2001-2003, and he recalls applicant advising him of a trip to Iran (Exhibit E).

Declarations from a number of applicant's coworkers, including former and current supervisors, and friends, were admitted into evidence (Exhibits A-F, V, W, BB). These letters establish that these individuals view applicant as an excellent employee, a trustworthy individual, and a loyal American. There is no evidence that any of these individuals were aware of the extent of applicant's falsifications when they prepared these affidavits.

³Response to SOR.

CONCLUSIONS

With respect to Guideline B, the evidence establishes that applicant's brother is a citizen and resident of Iran. This fact requires application of Disqualifying Condition E2.A2.1.2.1 (*an immediate family member . . . is a citizen of, or resident or present in, a foreign country*).

The DOHA Appeal Board has precluded application of Mitigating Condition 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*) in cases where an immediate family member of an applicant still resides in a country like Iran. Therefore, this mitigating condition is not applicable.

The DOHA Appeal Board has held, however, that a "Judge is not limited to Adjudicative Guidelines mitigating conditions when deciding whether an applicant has demonstrated extenuation or mitigation," but may consider "the totality of an applicant's conduct and circumstances" under "the Directive's general factors." ISCR Case No.03-17620 at 4 (App. Bd. April 17, 2006).

Applicant came to this country over 25 years ago. Since moving to the United States, her conduct has been consistent with her stated intention of making the United States her permanent home. She married here; became a United States citizen; had two children in the United States, and did not seek Iranian citizenship for them; purchased a home; acquired numerous real estate and other assets in the United States; and voted in United States elections. On the other hand, she has no assets in Iran, and even gave up any right she may have had to any of her parents' property in Iran after they died. In addition, although her contacts with her brother in Iran cannot be considered "casual and infrequent," the two of them have never been particularly close give the difference in their ages. Even though the foreign country at issue is one of the worst human rights abusers, considering the totality of applicant's conduct and circumstances under the Directive's general factors,⁴ I conclude that applicant's loyalty to the United States is such that even if she were forced to choose between loyalty to her brother and loyalty to the United States, she would undoubtedly choose her loyalty to the United States, and would report any attempt to pressure her to the proper authorities. Accordingly, I further conclude that she has met her burden and demonstrated sufficient mitigating and extenuating evidence to overcome the foreign citizenship and residence of her brother. Accordingly, Guideline B is found for applicant.

With respect to Guideline C, the evidence establishes that after she became a United States citizen in 1985, applicant renewed and used her Iranian passport. This fact requires application of Disqualifying Conditions E2.A3.1.2.1 (*the exercise of dual citizenship*), and E2.A3.1.2.2 (*possession and/or use of a foreign passport*).

In mitigation, applicant's Iranian citizenship is based solely on her birth in that country, she has renounced it, and she has surrendered her Iranian passport. Accordingly, she qualifies for Mitigating Conditions E2.A3.1.3.1 (*dual citizenship is based solely on birth in a foreign country*), and E2.A3.1.3.4 (*individual has expressed a willingness to renounce dual citizenship*). In addition,

⁴Directive, Sections E2.2.1.1. through E2.2.1.9.

although a renewal of a foreign passport after obtaining United States citizenship is always a security concern, I am convinced that applicant's sole reason for doing so was to be able to visit her elderly parents - and nothing more. Based on these facts, the fact that she has no reason or desire to travel to Iran in the future, and the fact that, viewing the evidence as a whole, she has shown a clear preference for the United States over Iran since arriving in the United States in 1979, Guideline C is found for applicant.

With respect to Guidelines E and J, the Government has alleged and proven that applicant intentionally provided false material information in response to two questions on two different SCAs and in a signed, sworn statement she gave to DSS. These falsifications of material facts are extremely troubling. The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, or in a signed, sworn statement, it is extremely difficult to conclude that he or she nevertheless possesses the good judgment, reliability and trustworthiness required of clearance holders. Applicant's intentional falsifications require application of Disqualifying Conditions E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*) and E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matters to an investigator . . .*) under Guideline E, and Disqualifying Condition E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*) under Guideline J.⁵ No Mitigating Conditions apply.

In reaching a decision under Guidelines E and J, I have considered the formal adjudication guidelines as well as the Directive's general factors. In the end, a decision under Guidelines E and J in this case boils down to this: Applicant's inability or unwillingness to admit that she attempted to conceal her possession of an active Iranian passport and her travel to Iran from the Government precludes a finding that she can now be relied upon to be truthful with the Government. Accordingly, Guidelines E and J are found against applicant.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

GUIDELINE C: FOR THE APPLICANT

GUIDELINE E: AGAINST THE APPLICANT

GUIDELINE J: AGAINST THE APPLICANT

DECISION

⁵Applicant's falsifications are felonies under 18 U.S.C. 1001.

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.

Joseph Testan
Administrative Judge