

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is 28 years old and has worked for a federal contractor since 1999 as a sales associate. She immigrated to the U.S. in 1997 from Iran and became a naturalized U.S. citizen in 2003. She considers herself a dual citizen of Iran and the U.S. and intends on renewing her passport in the future so she can travel to Iran. Her parents and sisters are also dual citizens residing in the U.S. She has many relatives and friends that she maintains regular and frequent contact with in Iran. Applicant failed to mitigate the security concerns raised under Guideline C for foreign preference and Guideline B for foreign influence. Clearance is denied.

CASENO: 06-11569.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-11569
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

Braden Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 28 years old and has worked for a federal contractor since 1999 as a sales associate. She immigrated to the U.S. in 1997 from Iran and became a naturalized U.S. citizen in 2003. She considers herself a dual citizen of Iran and the U.S. and intends on renewing her passport in the future so she can travel to Iran. Her parents and sisters are also dual citizens residing in the U.S. She has many relatives and friends that she maintains regular and frequent contact with in Iran. Applicant failed to mitigate the security concerns raised under Guideline C for foreign preference and Guideline B for foreign influence. Clearance is denied.

STATEMENT OF CASE

On August 28, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B for foreign influence and Guideline C for foreign preference.

In a sworn statement dated September 13, 2006, Applicant responded to the SOR allegations and admitted all the allegations under both guidelines. Applicant elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on March 14, 2007. The FORM was mailed to Applicant on March 15, 2007, and received on March 21, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on May 24, 2007.

FINDINGS OF FACT

Applicant is 28 years old and has worked for a federal contractor as a sales associate since 1999. She is single and has a college degree. She was born in Iran and immigrated to the U.S. in 1997, and became a naturalized U.S. citizen in 2003. Applicant considers herself a dual citizen of Iran and the U.S. and possesses an Iranian passport that was due to expire in December 1996. She stated in her security clearance application: "I have this passport because I am a born citizen of Iran. I will only use this passport when I have to visit my relatives in Iran."² Applicant was provided with a copy of the "Money Memo."³ Applicant stated in interrogatories that she intends to renew and/or

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²Item 2 at 35.

³Under a memorandum issued by Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, Arthur L. Money, dated August 16, 2000, (Money Memorandum), a security clearance must be denied or revoked for an Applicant with a foreign passport "unless the applicant surrenders the foreign passport."

obtain an Iranian passport in the future.⁴ She has not surrendered her Iranian passport. She affirmatively stated she is not willing to renounce her dual citizenship with Iran. She traveled to Iran in 2002 using her Iranian passport, but at that time she was not yet a U.S. citizen and would have had no other choice.

Applicant's mother, father, sister, and uncle are dual citizens of the U.S. and Iran and reside in the U.S. Another uncle and three cousins are citizens and residents of Iran. She has one cousin who is a citizen of Iran and resides in the United Arab Emirates; three cousins, an uncle and aunt who are citizens and residents of Italy; a cousin and friend who are citizens of Iran and reside in the United Kingdom; a friend who is a citizen of Iran and resides in Canada; and a friend who is a citizen and resident of Iran. Applicant checked a box saying her personal contact or correspondence with each person listed above was casual and infrequent, excluding her parents and sister. She described the frequency of the contact with the listed persons, excluding her parents and sister as monthly or a few times a year, by -email or telephone. She provided no other information about the status of her relationship with each person and what type of personal, familial, social or emotional obligation she has with each person. One friend and a cousin whom she contacts monthly are citizens and residents of Iran and are students. Others are employed in various positions. She provided no information about her contact and relationship with her parents and sister. No information was provided as to how often her parents and sister return to Iran or what type of family, financial, or other interests they maintain there or whether they have any contact with the Iranian government.

Applicant has no financial interests in Iran. She provides charitable financial support to "needy children" in Iran to support their education.⁵

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar.⁶ The U.S. has not had diplomatic relations with Iran since 1980.⁷ The President's National Security Strategy has stated that the United States "may face no greater challenge from a single country than from Iran."⁸

The U.S. Government has defined the areas of objectionable Iranian behavior as:

- Iran's efforts to acquire nuclear weapons and other weapons of mass destruction (WMD);
- Its support for and involvement in international terrorism;

⁴Item 5 at 6.

⁵Item 3.

⁶U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Report on Human Rights Practices-2005*, dated March 8, 2006, (Report on Human Rights Practices) at 1; U.S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet: Iran* Dated April 3, 2006.

⁷U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Iran*, Dated October 2006 (Background Note) at 7.

⁸President of the United States, *The National Security Strategy of the United States of America*, dated March 2006 (President's National Security Strategy) at 20.

- Its support for violent opposition to the Middle East peace process;
- Its dismal human rights record; and
Iran's intervention in the internal affairs of Iraq.⁹

The U.S. has designated and characterized Iran as the most active state sponsor of terrorism. Iran provides critical support to non-state terrorist groups.¹⁰

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include political killings and incarceration; summary executions, including of minors; disappearances; religious persecution; torture; arbitrary arrest and detention, including prolonged solitary confinement; denial of due process; severe restrictions on civil liberties - speech, press, assembly, association, movement and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.¹¹

_____The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. The children of Iranian citizens are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. As a result, U.S.-Iranian dual citizens have been detained and harassed by the Iranian government.¹²

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

⁹Background Note at 8; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism-2005*, dated April 2006, (Reports on Terrorism) at 21.

¹⁰Reports on Terrorism at 171 and 173.

¹¹Reports on Human Rights Practices.

¹²U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Iran*, dated October 10, 2006.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹³ The government has the burden of proving controverted facts.¹⁴ The burden of proof is something less than a preponderance of evidence.¹⁵ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.¹⁶ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷

No one has a right to a security clearance¹⁸ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁰ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²¹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of all the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline C-Foreign Preference is a security concern because 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.

Guideline B-Foreign Influence is a concern because a security risk may exist when an individual’s immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligations are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

¹³ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

¹⁴ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹⁵*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁶ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁸*Egan*, 484 U.S. at 531.

¹⁹*Id.*

²⁰*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²¹Executive Order 10865 § 7.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. I reach the following conclusions regarding the allegations in the SOR.

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1 (*The exercise of dual citizenship*) and FP DC E2.A3.1.2.2 (*Possession and/or use of a foreign passport*) apply. Applicant was born in Iran and became a naturalized U.S. citizen. She has in her possession an Iranian passport that although expired, she intends on renewing and using it in the future to travel to Iran. She was provided a copy of the “Money Memo” and has chosen to retain her passport. She considers herself a dual citizen and intends on exercising her dual status through use of her passport. The possession and/or use of a foreign passport is an exercise of dual citizenship. Both of the above disqualifying conditions apply.

I have considered all the mitigating conditions and especially considered Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.1 (*Dual citizenship is based solely on parents’ citizenship or birth in a foreign country*), FP MC E2.A3.1.3.2 (*Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship*) and FP MC E2.A3.1.3.4 (*Individual has expressed a willingness to renounce dual citizenship*), and conclude none apply. Applicant has in her possession her Iranian passport that she intends on renewing and using in the future. This is an exercise of dual citizenship that is based on her affirmative actions, vice her parents citizenship or her birth in a foreign country. She retained the passport after becoming a U.S. citizen and intends on doing so again. Thus, both FP MC E2.A3.1.3.1 and FP MC E2.A3.1.3.2 do not apply. Applicant is unwilling to renounce her Iranian citizenship, so this mitigating condition can not be applied. Under the “Money Memo” Applicant’s retention of her Iranian passport and intentions of renewing it and using it in the future precludes her from obtaining a security clearance. I find under the above analysis she has failed to mitigate the foreign preference concerns.

Based on all the evidence, Foreign Influence Disqualifying Condition (FI 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*) applies. Applicant parents and sister are immediate family members who are dual citizens of Iran and the U.S. Applicant maintains regular monthly contact with various relatives and friends in Iran, and regular but less contact with others.

I have considered FI DC E2.A2.1.3.8 (*A substantial financial interest in a country, or in any foreign-owned or-operated business that could make the individual vulnerable to foreign influence.*) Applicant’s monetary support to “needy children” in Iran is characterized as a charitable contribution and not a financial interests. There is no evidence she has a financial interest in the organization. Therefore, this disqualifying condition does not apply.

I have considered all of the mitigating conditions and especially considered Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1 (*A determination that the immediate family member(s) (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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*), and FI MC E2.A2.1.3.2 (*Contacts and correspondence with foreign citizens are casual and infrequent*), and I conclude they do not apply. Applicant's immediate family to include her parents and sister are dual citizens of Iran and the U.S. No information was provided as to what type of relationship or contact she has with her parents and sister. No information was provided as to what their contact is with relatives in Iran, how often they travel to that country, whether they receive government support and other relevant information. Insufficient information was provided to determine that they do not have connections to the Iranian government or are not in a position to be exploited by Iran in a way that could force Applicant to choose between loyalty to her family and the U.S. Therefore, I find FI MC E2.A2.1.3.1 does not apply. It is presumed that her ties with her immediate family are more than casual and infrequent. However, without additional information about her personal relationships and ties to her other relatives and friends in Iran and elsewhere, it cannot be presumed that it is casual and infrequent. Applicant carries the burden of providing factual information about the ties she has to these people and has failed to do so. I find FI MC E2.A2.1.3.2 does not apply.

The nature of the country in this case, Iran, is an important factor based on its past history of exploiting its citizens and those that are legally in its country.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to meet her burden to mitigate the security concerns raised by the foreign preference and foreign influence concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline C and Guideline B are decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Foreign Influence (Guideline B)

AGAINST APPLICANT

Subparagraph 1.a-m	Against Applicant
Paragraph 2 Foreign Preference (Guideline C)	AGAINST APPLICANT
Subparagraph 2.a-c:	Against Applicant
Subparagraph 2. d:	For 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.

Carol. G. Ricciardello
Administrative Judge