

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant’s application for, renewal of, and regular use of a foreign passport after becoming a naturalized U.S. citizen demonstrate foreign preference. Applicant has neither invalidated the passport nor obtained formal approval for its use. However, although Applicant is not potentially subject to foreign influence because of her family contacts—her parents and brother are dual citizens of the U.S. and Iran residing in the U.S., and her grandmother is a citizen of Iran residing in France—her frequent travel to Iran subjects her to potential foreign influence. Clearance denied.

CASENO: 06-16580.h1

DATE: 09/25/2007

DATE: September 25, 2007

In Re:	)	
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	)	
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SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Gina Marine, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant's application for, renewal of, and regular use of a foreign passport after becoming a naturalized U.S. citizen demonstrate foreign preference. Applicant has neither invalidated the passport nor obtained formal approval for its use. However, although Applicant is not potentially subject to foreign influence because of her family contacts—her parents and brother are dual citizens of the U.S. and Iran residing in the U.S., and her grandmother is a citizen of Iran residing in France—her frequent travel to Iran subjects her to potential foreign influence. Clearance denied.

## **STATEMENT OF THE CASE**

Applicant challenges the 10 January 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of foreign influence and foreign preference.<sup>1</sup> She answered the SOR 31 January 2007, and requested a hearing. DOHA assigned the case to me 29 June 2007 and I convened a hearing 6 August 2007. DOHA received the transcript (Tr.) 15 August 2007.

## **PROCEDURAL ISSUES**

On 28 June 2007, Department Counsel moved to amend the SOR by adding ¶1.d., alleging her travel to Iran. Applicant raised no objection, and I granted the motion (Tr. 11-12). At hearing, Department Counsel moved to amend the SOR by adding ¶1.e., alleging that her new in-laws are citizens and residents of Iran. I denied the motion (Tr. 91-92).

## **FINDINGS OF FACT**

Applicant admitted the allegations of the SOR, except for SOR 1.c. Accordingly, I incorporate those admissions as findings of fact.

Applicant—a 25-year-old computer analyst employed by a defense contractor since March 2003—seeks access to classified information. She has not previously held a clearance. However, in July 2004, she was subject to a background investigation to work for the Drug Enforcement Administration (DEA).

Applicant was born in Iran in August 1981. When she was six years old, she immigrated to the U.S. with her parents. She became a naturalized U.S. citizen in August 1992. Her parents and brother are also naturalized U.S. citizens. Applicant was educated in the U.S., and obtained her undergraduate degree in computer science in January 2004.

Although Applicant denies being a dual citizen of the U.S. and Iran, she applied for an Iranian passport in October 2000, which she used to travel to Iran in December 2000, December

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<sup>1</sup>Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).

2002, and August 2004. While this passport was due to expire in October 2005, Applicant applied for an extension of the expiration date to October 2010. She used her Iranian passport to travel to Iran in January 2006. Applicant maintains that these trips to Iran were for tourism. She has no property interests, no personal interests, and no close family members in Iran (Tr. 46).

In her October 2006 response to DOHA interrogatories (G.E. 2), Applicant expressed an unwillingness to renounce her Iranian citizenship (which she acknowledge having acquired by birth) or to surrender her Iranian passport. She is unwilling to renounce her Iranian citizenship because Iran does not accept renunciation of citizenship and she is concerned that any effort to renounce her Iranian citizenship “could result in undesired attention and danger to me and my family by the foreign government.” She cited a similar concern over surrendering her Iranian passport, as well as the fact that surrendering the passport “would inhibit my ability to travel to Iran.” She stated that she uses her Iranian passport only to enter Iran, as exiting Iran is facilitated with her U.S. passport. In her November 2006 response to DOHA interrogatories (G.E. 3), Applicant restated her unwillingness to surrender her Iranian passport because it would curtail her entry into Iran.

Applicant has not surrendered her Iranian passport. At hearing, she stated a conditional willingness to do so—and to refrain from travel to Iran—during any period she held a clearance, provided she did not have to surrender it to Iranian authorities (Tr. 54). She remained otherwise concerned about the risk to herself and her family if the Iranian government were to become aware of her action.

Although Applicant seems to grasp the concept that she cannot travel to Iran on her U.S. passport because of the state of relations between the U.S. and Iran, and Iran’s failure to recognize her U.S. citizenship, she apparently fails to grasp the converse concept that she is only able to obtain an Iranian passport because Iran considers her an Iranian citizen, and that her application for an Iranian passport is an assertion of Iranian citizenship on her part. In short, she fails to see why her possession and use of an Iranian passport raises security concerns. Applicant asserts that her travel to Iran is in the national interest, because it keeps her directly informed of circumstances in Iran and aids her analytical work for her employer. However, she acknowledges that her trips to Iran are not work related or sanctioned by the U.S. government (Tr. 89).

Iran is a fundamentalist Islamic republic with a poor human rights record. Its relations with the U.S. are confrontational and unlikely to improve given Iran’s efforts to acquire nuclear weapons, its sponsorship of, support for, and involvement in, international terrorism, and its support for violent opposition to the Middle East peace process. Nevertheless, Iran is not a known collector of U.S. intelligence or sensitive economic information, nor is it known to target U.S. citizens to obtain protected information.

Travel to Iran remains problematic. The Department of State’s May 2007 Travel Warning continues to warn U.S. citizens to carefully consider the risks of travel to Iran, noting that dual national Iranian-American citizens may encounter difficulty in departing Iran. Some elements of the Iranian government and population remain hostile to the U.S. Consequently, American citizens may be subject to harassment or arrest while traveling or residing in Iran. Americans of Iranian origin are urged to consider the risk of being targeted by authorities before planning travel to Iran. In addition, Iranian authorities may deny dual nationals access to the U.S. Interests Section in Tehran, because they are considered to be solely Iranian citizens. Large-scale demonstrations have taken place in

various regions throughout Iran over the past several years as a result of a sometimes volatile political climate. U.S. citizens who travel to Iran despite the travel warning are urged to exercise caution.

The U.S. government does not currently have diplomatic or consular relations with the Islamic Republic of Iran, and, therefore, cannot provide protection or routine consular services to American citizens in Iran. The Swiss government, acting through its Embassy in Tehran, serves as protecting power for U.S. interests in Iran. Neither U.S. passports nor visas to the United States are issued in Tehran. The Iranian government does not recognize dual citizenship and generally does not permit the Swiss to provide protective services for U.S. citizens who are also Iranian nationals. In addition, U.S. citizens of Iranian origin who are considered by Iran to be Iranian citizens have been detained and harassed by Iranian authorities.

Applicant's former supervisor considers her work to be excellent, trusts her, and recommends her for her clearance (Tr. 35-41). However, he is only aware of the dual-citizenship issues in the case, not the passport and travel issues (Tr. 44).

### **POLICIES AND BURDEN OF PROOF**

The Revised Adjudicative Guidelines list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline B (Foreign Influence) and Guideline C (Foreign Preference) .

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>2</sup>

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

## CONCLUSIONS

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications can and should consider the identity of the foreign country in which the foreign contact or financial interest is located—including, but not limited to, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>3</sup> Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>4</sup>

In this case, the government failed to establish a case for disqualification under Guideline B as regards her family members who are dual Iranian-U.S. citizens or solely Iranian citizens, residing outside Iran. Considering first the foreign country involved, Iran and the U.S. enjoy strained foreign relations at best. Although Iran is not a known collector of U.S. intelligence or sensitive economic information, or known to target U.S. citizens to obtain protected information, the fact that Iran does not recognize dual citizenship and considers such citizens to be solely Iranian might present security concerns regarding Applicant's parents, brother, and grandmother if they resided in Iran. However, given that her parents and brother reside in the U.S. as U.S. citizens, and her grandmother resides in France, the government's evidence failed to establish that there was any risk, much less a heightened risk, of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's family contacts outside Iran.

Nevertheless, the government established a case for disqualification under Guideline B because of her travel to Iran in December 2000, December 2002, August 2004, and January 2006.<sup>5</sup> Ordinarily, travel to a foreign country—even a country of origin—has no independent security significance, but only serves to demonstrate an Applicant's ties of affection to family members residing there. However, in this case Applicant travels to Iran for vacation, and subjects herself to the jurisdiction of a government that is hostile to the U.S., but considers her to be only an Iranian citizen and thus likely to be denied access to what little assistance is available to U.S. citizens through the U.S. Interests Section in Tehran. Even though Iran is not an active collector of sensitive U.S. information, an applicant in Applicant's circumstances who travels to Iran presents a potential

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<sup>3</sup>Revised Adjudicative Guidelines, ¶ 6.

<sup>4</sup>Revised Adjudicative Guidelines, ¶ 7.(a).

<sup>5</sup>Revised Adjudicative Guidelines, ¶ 7.(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

target of opportunity that presents an unacceptable risk of being coerced to provide information. I resolve Guideline B against Applicant.

The government also established a case for disqualification under Guideline C by showing that Applicant obtained an Iranian passport in October 2000, had it extended in October 2005, used it to travel to Iran in December 2000, December 2002, August 2004, and January 2006, and is likely to use it to travel to Iran in the future, despite becoming a naturalized U.S. citizen in August 1992.<sup>6</sup> Applicant has not mitigated the Guideline C security concerns. Although she has been a dual citizen of Iran and the United States since her birth, her Iranian citizenship would have little security significance if based solely on her parents' citizenship. For her conduct to fall within the security concerns of Guideline C, she must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C. The government has a compelling interest in ensuring those entrusted with this nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen.

Applicant meets none of the mitigating conditions (MC) for foreign preference. Her dual citizenship is not based solely on her parents' citizenship, but is based on her active exercise of dual citizenship after becoming a naturalized U.S. citizen.<sup>7</sup> She has not expressed a willingness to renounce her foreign citizenship, albeit so she would not draw the attention of Iranian authorities to herself.<sup>8</sup> All exercise of dual citizenship occurred after she obtained U.S. citizenship, while she was an adult.<sup>9</sup> Applicant's use of her Iranian passport has not been sanctioned by the U.S.<sup>10</sup> Although she stated a conditional willingness, based on obtaining her clearance, to invalidate her passport and refrain from traveling to Iran while she has a clearance, she has taken no action to invalidate her passport.<sup>11</sup> Further, foregoing travel to Iran while she has a clearance does not mitigate the security concerns. Once she stopped having access to classified information, she would still have the knowledge acquired while cleared. Renewing and using her Iranian passport in the future, as seems likely, would subject that information to potential compromise. While Applicant has a legal right to maintain her dual citizenship with its attendant benefits and responsibilities, she has not demonstrated that she can be counted on to always act in preference to the United States. I resolve Guideline C against Applicant.

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<sup>6</sup>Revised Adjudicative Guidelines, ¶ 10.(a) 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. This included but is not limited to: (1) possession of a current foreign passport; (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

<sup>7</sup>Revised Adjudicative Guidelines, ¶ 11.(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

<sup>8</sup>¶ 11.(b) the individual has expressed a willingness to renounce dual citizenship;

<sup>9</sup>¶ 11.(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

<sup>10</sup>¶ 11.(d) use of a foreign passport is approved by the cognizant security authority;

<sup>11</sup>¶ 11.(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

**FORMAL FINDINGS**

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	Amendment Denied

Paragraph 2. Guideline C: AGAINST APPLICANT

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	Against 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 denied.

**John G. Metz, Jr.  
Administrative Judge**