

KEYWORD: Criminal Conduct; Personal Conduct; Foreign Influence

DIGEST: Applicant is a 36-year-old employee of a defense contractor. She shoplifted on numerous occasions between 1994 and 2000. She has not shoplifted or been arrested since 2000. Applicant established proof of rehabilitation. She has minimal contact with extended family members in Iran. Applicant has mitigated the security concerns based on her criminal conduct, personal conduct, and foreign influence. Clearance is granted.

CASENO: 06-16853.h1

DATE: 04/27/2007

DATE: April 27, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-16853
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT

Howard Metcalf, Personal Representative

SYNOPSIS

Applicant is a 36-year-old employee of a defense contractor. She shoplifted on numerous occasions between 1994 and 2000. She has not shoplifted or been arrested since 2000. Applicant established proof of rehabilitation. She has minimal contact with extended family members in Iran. Applicant has mitigated the security concerns based on her criminal conduct, personal conduct, and foreign influence. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 29, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on September 10, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on January 24, 2007. A notice of hearing was issued on February 5, 2007, scheduling the hearing for February 27, 2007. Applicant requested a continuance, which was granted. Another notice of hearing was issued on March 6, 2007, rescheduling the hearing for March 23, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered three exhibits that were marked as Government Exhibits (GE) 1 through 3, and admitted without objection. Applicant testified and offered seven exhibits that were marked Applicant Exhibits (AE) A through G, and admitted without objection. DOHA received the hearing transcript (Tr.) on April 10, 2007.

RULINGS ON PROCEDURE

Department Counsel requested administrative notice be taken of the facts contained in Hearing Exhibit (HE) IX. The source documents for the facts are U.S. Department of State, Background Note: Iran, dated October 2006 (HE I); U.S. Department of State, Consular Information Sheet: Iran, dated April 3, 2006 (HE II); U.S. Department of State, Travel Warning: Iran, dated October 10, 2006 (HE III); Congressional Research Service, CRS Report for Congress, Iran: U.S. Concerns and Policy Responses, updated January 5, 2007 (HE IV); U.S. Department of State, Country Reports on Human Rights Practices - 2005: Iran, dated March 8, 2006 (HE V); U.S. Department of State, Country Reports on Terrorism 2005, dated April 2006, Chapters 3 and 6 (HE VI); Testimony of Director of Central Intelligence, Porter J. Goss, before the Senate Select Committee on Intelligence, dated February 16, 2005 (HE VII); and President of the United States, the National Security Strategy of the United States of America, dated March 2006 (HE VIII). I took administrative notice of the facts contained in HE I through VIII, as substantially stated in HE IX.

Applicant requested that her personal representative also testify as a witness. Department Counsel did not object. The personal representative testified before the Applicant and other witnesses testified.

FINDINGS OF FACT

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 36-year-old employee of a defense contractor. Applicant served in the United States Army from 1992 to 1997. She was honorably discharged as a Staff Sergeant (E-6). She is a high school graduate, with technical and community college credits. Applicant is married. She has a child from her first marriage, and has two stepchildren.²

Applicant was born in Iran. Her parents left Iran in about 1970 or 1971, and went to Canada. Her father came to the U.S. in about 1973. Applicant and her mother followed her father several months later in about 1974. Her father became a U.S. citizen in 1980, and her mother in 1982. As a minor, Applicant was naturalized when her parents were naturalized. She is unsure specifically when this occurred. Applicant visited Iran with her parents in 1976, when she was six years old. That was the last time she has been to Iran.³

Applicant's only sibling was born in the U.S. in 1979. Her parents never registered the sibling as an Iranian citizen. Applicant's father does not have any relatives in Iran. His parents are both deceased, and buried in the U.S. He has a strong hatred of the Iranian regime. Applicant's father is a successful businessman. He has also not been back to Iran since 1976.⁴

Applicant's mother has family members living in Iran. Her brother, Applicant's uncle, is a citizen and resident of Iran, as is his son. Applicant's uncle is a retired elementary school assistant principal. His son is a high school student. Applicant's uncle and his son used to periodically visit the United States. Applicant occasionally saw him on his visits. Her last contact with her uncle and his son was in 2004, when they came to the U.S. to visit. She has had no contact of any kind with her uncle or his son since that visit.⁵

Applicant's aunt, her aunt's husband, and their four children are citizens and residents of Iran. Her aunt is a retired elementary school principal. Her husband is a retired high school physical education teacher. One cousin is an elementary physical education teacher, two cousins are college students, and one cousin is a high school student. Applicant has not seen her aunt since Applicant visited Iran in 1976, when she was six years old. Applicant has never met her aunt's husband or children. She has not spoken to her aunt since 2002, when her grandmother passed away, and a call was made from her parent's house to offer condolences.⁶

²Tr. at 24-25, 87, 133-135; GE 1 at 3-5; AE F.

³Tr. at 58-60, 69, 126; GE 1.

⁴Tr. at 58-69; GE 1; AE F.

⁵Tr. at 65, 126-127, 153, 158; Applicant's response to SOR; GE 3; AE E.

⁶Tr. at 126-127; Applicant's response to SOR; GE 3; AE E.

Applicant's mother has visited her family in Iran on two occasions since 1976. She traveled to Iran in about 2002, when her mother passed away. She returned to Iran in 2006, to visit her brother who had a heart attack. She made a point not to contact Applicant while she was in Iran. Applicant's mother talks to her family in Iran by telephone every several weeks.⁷

Applicant was stationed overseas with the U.S. Army from 1994 through 1997. On approximately three to four occasions, Applicant switched price tags on merchandise at the military exchange in order to buy the merchandise at a lower price. Between 1997 and 1999, Applicant switched price tags at a department store on about 10 to 15 occasions.⁸

Applicant was arrested in February 2000, at an exchange on a military installation, and charged with larceny of property belonging to the exchange. Applicant stole several clothing items and two bottles of perfume. She also switched prices on several clothing items. She entered a pre-trial diversion program in which she was ordered to complete 200 hours of community service, attend a class on theft, and pay \$100 in court costs. Charges were dismissed in 2001, upon Applicant's completion of the requirements of her pre-trial diversion program.⁹

After Applicant was arrested in 2000, she informed security personnel at her company of her arrest. The other incidents of theft and shoplifting were divulged by Applicant pursuant to a background investigation interview. Applicant has not been arrested, shoplifted, or committed any other theft since her 2000 arrest.¹⁰

Applicant's husband also works in the defense industry, and has held a security clearance for many years. Applicant and her husband started dating in about November 2000, and married in 2003. She was very forthright with her husband, telling him early in their relationship about her criminal record. He testified about the changes in Applicant, and provided examples of her honesty, including returning to a store to correct an undercharge by the store.¹¹

Applicant and her husband are financially very sound. They both earn good salaries, and have no credit card debt. They own their house, with substantial equity. They have a solid investment portfolio, including stocks, 401(k) plans, and IRAs. Applicant's stepchild is attending college. All three of their children have a funded college education plan.¹²

Applicant has worked for her current employer since 1997. Her criminal past is known in her company to key personnel. Her facility security officer (FSO) testified that she and the company's Chief Executive Officer (CEO) were both aware of Applicant's past. The CEO described Applicant

⁷Tr. at 70-73; 152-155.

⁸Tr. at 137-138; Applicant's response to SOR; GE 2 at 2.

⁹Tr. at 141-142, 159; Applicant's response to SOR; GE 2.

¹⁰Tr. at 114-115; 122-123, 160-161; GE 2.

¹¹Tr. at 76-81.

¹²Tr. at 82, 121; AE F.

as dedicated, straight forward, and reliable, demonstrating good judgment and honesty. He has observed Applicant and her husband in social settings and believes she is a dedicated wife with strong family values. He recommends her for a position of trust and a security clearance.¹³ Applicant's witnesses and numerous character letters from family, friends, and people who know her from work or the Army attest to her character, dedication, loyalty, trustworthiness, and ability to handle classified information. Some, but not all, of her character references are aware of the allegations in the SOR. Applicant's father is also aware of Applicant's shoplifting crimes.¹⁴

Applicant received numerous awards and accolades while in the Army. Her military and civilian job performance evaluations are excellent. She is also very active in the community, actively involved in sports, youth activities, and a number of charities.¹⁵

Iran is a country that is clearly hostile to the United States.¹⁶ The U.S. has not had diplomatic relations with Iran since 1980. The President's National Security Strategy has stated that the United States "may face no greater challenge from a single country than from Iran."¹⁷

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.¹⁸

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;
- Its support for violent opposition to the Middle East peace process; and
- Its dismal human rights record.¹⁹

Iran's intervention in the internal affairs of Iraq is also a concern.²⁰

¹³Tr. at 97-99; AE A.

¹⁴Tr. at 63, 161-166; AE A.

¹⁵AE B, C, D, G.

¹⁶See, e.g., ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007).

¹⁷HE I at 7; HE VIII at 20; HE IX at 1-2.

¹⁸HE II at 1; HE V at 1; HE IX at 2.

¹⁹HE I at 7; HE IX at 2.

²⁰HE I at 7; HE IV at CRS-23-24; HE VI at 173; HE VII at 5; HE IX at 2-4.

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, and routinely provides unique safe haven, substantial resources and guidance to terrorist organizations. State sponsors of terrorism pose a grave WMD terrorism threat. Iran presents a particular concern, given its active sponsorship of terrorism and its continued development of a nuclear program. Iran is also capable of producing biological and chemical agents or weapons. Iran could support terrorist organizations seeking to acquire WMD.²¹

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; kidnappings; 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.²²

_____The State Department continues to warn U.S. citizens, particularly those born in Iran, to consider carefully the risks of travel to Iran. Iranian born, naturalized U.S. citizens, and the children of such persons, 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.²³

POLICIES

“[N]o one has a ‘right’ to a security clearance.”²⁴ As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”²⁵ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”²⁶ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.²⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such

²¹HE VI at 171, 173; HE IX at 3.

²²HE V; HE IX at 5.

²³HE II; HE IX at 5-6.

²⁴*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁵*Id.* at 527.

²⁶Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²⁷ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

sensitive information.²⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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.²⁹

The Directive sets forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each 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 adjudicative process factors listed in ¶ 6.3 and ¶ E2.2.1 of the Directive.

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 section below.

CONCLUSIONS

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

Guideline J, Criminal Conduct

A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness.

Applicant admits she committed larceny on a number of occasions between 1994 and 2000. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) both apply.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*) and CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*). Applicant was arrested in February 2000. There is no evidence of any criminal activity since then. Applicant now has a stable family situation. She is a pillar of her community, and is highly regarded at work. She and her husband both have good jobs, with substantial salaries. They are financially secure. Her husband recalled instances where Applicant has proven her honesty. Her testimony was sincere and she displayed the appropriate remorse for her crimes. I find the criminal behavior was not recent and there is clear evidence of successful rehabilitation. CC MC E2.A10.1.3.1 and CC MC E2.A10.1.3.6 are applicable.

Guideline E, Personal Conduct

²⁸*Id.*; Directive, ¶ E2.2.2.

²⁹Exec. Or. 10865 § 7.

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.1 (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*) and PC DC E2.A5.1.2.4 (*Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*) apply to Applicant's criminal activities.

I considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). Applicant's evidence of rehabilitation, as discussed above, is also relevant to this mitigating condition. Key people in her life, including her family and employer, are aware of her criminal actions. Applicant has significantly reduced her vulnerability to coercion, exploitation, or duress. PC MC E2.A5.1.3.5 is applicable.

Guideline B, Foreign Influence

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 obligation 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 interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

A Foreign Influence Disqualifying Condition (FI DC) may arise if (*[a]n 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*) FI DC E2.A2.1.2.1.

Applicant's extended family in Iran do not qualify as immediate family members, which is defined as "spouse, father, mother, sons, daughters, brothers, sisters."³⁰ The Appeal Board on numerous occasions has indicated that there is a presumption that an applicant has close ties of affection or obligation with immediate family members, and the family members of an applicant's spouse. That presumption does not extend to aunts, uncles, and cousins.³¹ Applicant has had only brief sporadic contact with her uncle and his son over many years. Her contact with her aunt and her aunt's family have been much less. She has never met her aunt's family. Applicant last saw her aunt in 1976, and has had no other contact with her aunt, other than a brief phone call upon her grandmother's death. There is no evidence to support a finding of familial affection or obligation

³⁰Directive ¶¶ E2.A2.1.2.1 and E2.A2.1.3.1.

³¹ISCR Case No. 02-26978 (App. Bd. Sep. 21, 2005); ISCR Case No. 01-03120 at 3 (App. Bd. Feb. 20, 2002).

between Applicant and her extended family in Iran.³² No Foreign Influence Disqualifying Condition has been established.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive. I have also considered every finding of fact and conclusion discussed above.

Applicant has extended family members in a country that is very hostile to the United States. The administrative notice documents describe Iran's efforts to acquire nuclear weapons and other weapons of mass destruction; Iranian support and involvement in international terrorism; Iran's violent opposition to the Middle East peace process; and Iran's dismal human rights record.

I also considered that Applicant's contact with her extended family members in Iran have been minimal. She does not have close ties of affection or obligation with them. Applicant barely knows her uncle and his son, and really does not know her aunt or her aunt's family. Her family members are involved in education, and have little involvement with the government of Iran. Her mother visited Iran on two occasions, in about 2002, when her mother passed away, and again in 2006, to visit her brother who had a heart attack. She made a point not to contact Applicant while she was in Iran. While this underscores the brutal nature of the Iranian government, it lessened Applicant's vulnerability to pressure, coercion, exploitation, and duress. Applicant left Iran when she was very young, and returned on only one occasion, more than 30 years ago, when she was six years old. All her immediate family members are in the United States, and are U.S. citizens. Applicant and her husband are financially secure. After weighing all the evidence, I find that Applicant has established that her minimal contact with extended family members in Iran does not create a heightened vulnerability to pressure, coercion, exploitation, and duress.

Applicant's conduct has been contradictory. She was very highly regarded in the Army, and in her workplace, yet she on many occasions stole from exchanges and department stores. Her character evidence speaks well of her. Also telling is her husband's accounting of specific instances of her honesty. After considering all the evidence, and assessing her credibility and sincerity, I am satisfied that Applicant is rehabilitated.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on her criminal conduct, personal conduct, and foreign influence.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

³²*Id.*

Paragraph 1. Guideline J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3.. Guideline B:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant

DECISION

In light of all of 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. Clearance is granted.

Edward W. Loughran
Administrative Judge