



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 06-20455
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: Thomas M. Abbott, Attorney At Law

September 29, 2008

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations (e-QIP), on August 6, 2007. On March 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and E for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 21, 2008. She answered the SOR in writing on April 24, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on June 4, 2008. A notice of hearing was issued on June 17, 2008, and the matter was scheduled for hearing on July 10, 2008. The Government presented two exhibits, referred to as Government Exhibits 1 and 2, which were received without objection. The Applicant presented fourteen exhibits, referred to as Applicant's Exhibits A through N, which were received without objection. The Applicant also testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on July 22, 2008. Based upon a review of the case file,

pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Iran. Applicant had no objection. (Tr. p. 12). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

The Applicant is 35 years old and married. She is employed by a defense contractor as an Electrical Engineer, and is applying for a security clearance in connection with her employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Tehran, Iran to Iranian parents. Her parents divorced when she was two years old, and her mother moved to the United States and remarried. The Applicant was raised by her paternal grandparents until the age of nineteen, when she came to the United States. In May 1993, the Applicant, was sponsored by her mother and came to the United States to pursue the American dream. In 2000, she became a naturalized United States citizen.

In 1999, the Applicant married an Iranian citizen who resides with her in the United States. He currently has a green card. Her husband plans to apply for United States citizenship, but because of a criminal record, he is ineligible until he completes his probation in 2009.

The Applicant's mother resides in the United States and is a naturalized United States citizen. Her mother's husband has passed away. Her mother had one daughter from the marriage. The Applicant's half-sister resides in the United States with the Applicant's mother. She has a young daughter, who is the Applicant's niece.

The Applicant's father is a citizen and resident of Iran. The Applicant indicates that she was never close to her father because she was raised by his parents. She last spoke to him in 2005. Her father is 64 years old, and retired from working for a water and power company. She does not know if the company he worked for is government affiliated.

The Applicant explained that her father sent her paperwork to help him and his Iranian wife get a green card to permit them to come to the United States. The Applicant did not apply for him because she does not want him to stay with her. Her father knows that she is an electrical engineer and knows the name of the company she works for. The Applicant's father and his wife have two children.

The Applicant has a half-brother and half-sister in Iran. The Applicant's half-brother is married, and he and his wife work for the same pharmaceutical company. The Applicant has what she describes as a "polite relationship" with her half-brother and half-sister. She last spoke to her half-brother in August 2007. They both know that she works for a defense contractor as an Electrical Engineer. The Applicant's half-sister resides with their father and is attending school. The Applicant and her half-sister do not get along.

The Applicant's paternal grandmother, who raised the Applicant, and with whom the Applicant has the closest relationship, is a citizen and resident of Iran. Her grandmother is now 87 years old and not in good health. The Applicant's grandfather passed away in 1992.

The Applicant's father-in-law is a citizen of Iran and a resident of both the United States and Iran. He has a green card that he obtained in 2002. He splits his time between Iran and the United States. He is a retired journalist for a local newspaper in Iran. He has two sons that reside in the United States.

The Applicant's husband has one sister and two brothers who are citizens and residents of Iran. One of her brother-in-laws knows that the Applicant is an electrical engineer and where she works. The other brother-in-law is mentally handicapped and needs supervision. Her sister-in-law and her husband in Iran are book publishers. They have two children. Her sister-in-law also knows the name of the company the Applicant works for.

Since 1993, the Applicant has traveled back to Iran on three occasions to visit her family there. She traveled to Iran in 1997, in 2002 for her wedding ceremony and to share her success with her grandmother, and in 2005, to attend her half-brother's wedding. The only family that the Applicant felt she had in the United States was her mother. In August 2007, because her grandmother was very ill, the Applicant made arrangements with her other relatives to bring her grandmother to Turkey so that the Applicant could visit her. The Applicant met her grandmother and other family members from Iran in Turkey for that visit.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of her personal background during the clearance screening process.

The Applicant completed a Security Clearance Application (SF-86) which was electronically submitted on May 7, 2003. Question 15 asked her, "In the last seven years, have you had an active passport that was issued by a foreign government", to which she answered, "No". This was a false response. The Applicant failed to list the

fact that she had an Iranian passport which had been extended on May 13, 2002 to June 16, 2007.

Question 16 of the same security clearance application, asked the Applicant "Have you traveled outside the United States on other than official U.S. Government orders in the last seven years", to which the Applicant answered, "No". This was a false response. The Applicant failed to list the fact that she had traveled to Iran in 1997, and in 2002, for her wedding.

For three years, from 2003 through 2006, the Applicant did not disclose to the Government or to anyone else that she had an Iranian passport and that she had traveled to Iran in 1997 and 2002. The Applicant stated that she knowingly and conscientiously made the decision not to disclose this information, as she did not want anyone to know about her ties to Iran. (Tr. pp. 84-85). She had heard from her friends that if she disclosed her travel to Iran it would look bad and it might jeopardize her chances of obtaining a security clearance. (Tr. p. 87). Her whole fear was that if she disclosed her Iranian passport and her trips to Iran her security clearance might be denied. (Tr. p. 89). She also stated that she did not know how important it was to be honest. (Tr. pp. 100 -101).

After waiting three years for the security clearance application process and after being removed from her position in the lab, the Applicant reported that she possessed an Iranian passport and that she had traveled to Iran in 1997 and 2002. (Tr. pp. 67-68 and 90-91). The Applicant has since shredded her Iranian passport. (Tr. p. 69 and Applicant's Exhibit N). She has not renounced her Iranian citizenship, but is willing to do so.

Letters of recommendation from professional associates of the Applicant, including her supervisor, attest to her outstanding work performance, diligence, reliability, trustworthiness and her expertise as an Engineer. (See Applicant's Exhibits A, B, C, D, F, G, and H).

Applicant's Performance Evaluations for 2004, 2005, 2006 and 2007 reflect that she either meets or exceeds expectations in every category. (See Applicant's Exhibit I). Applicant has received various awards and commendations for her contributions to the company. (See Applicant's Exhibit J).

Since members of Applicant's family are citizens and residents of Iran, it is relevant to examine the status and the nature of the country. 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

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline B (Foreign Influence)

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline 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, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16.(a) Deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

Conclusion

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in foreign influence and dishonesty that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant is subject to foreign influence (Guideline B) and has engaged in dishonest conduct (Guideline E). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with her security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines B and E of the SOR.

Under Foreign Influence, Guideline B, Disqualifying Condition 7.(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion applies. However Mitigating Condition 8.(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S. also applies.

The Applicant has immediate and extended relatives in Iran. Her grandmother, is the person with whom she has the closest bond of affection. Her grandmother is a citizen and resident of Iran, and has been like a mother to the Applicant. The Applicant's close and continuing contact with her grandmother as well as her contact with other relatives in Iran pose a security risk. Although she does not maintain regular consistent contact with any of them, most of her relatives in Iran know what she does for a living, and they know who she works for. The Applicant has deep emotional ties with her family in Iran as evidenced by her decision and great effort to hold her wedding

ceremony in Iran with relatives instead of with her friends in the United States. Under the heightened scrutiny analysis, the Applicant's family in Iran pose a significant security risk. Accordingly, I find against the Applicant under this guideline.

Under Personal Conduct, Guideline E, Disqualifying Condition 16.(a) *Deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. None of the mitigation conditions are applicable.

The evidence shows that the Applicant intentionally falsified her security clearance application in 2003, by failing to disclose that she possessed an Iranian passport and that she traveled to Iran in 1997 and in 2002. She failed to disclose this information because she did not want to jeopardize her chances of obtaining a security clearance. This intentional deception goes directly to the Applicant's credibility. I cannot find that she is sufficiently trustworthy to have access to classified information. The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of her personal background. Accordingly, Guideline E is found against the Applicant.

I have considered all of the evidence presented, including her favorable recommendations, performance evaluations and awards, however, it does not come close to mitigating the negative effects of her foreign influence and her dishonesty and the effects that it can have on her ability to safeguard classified information.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

Formal Findings

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:	Against the Applicant.
Subpara. 1.a.:	Against the Applicant.
Subpara. 1.b.:	Against the Applicant.
Subpara. 1.c.:	Against the Applicant.
Subpara. 1.d.:	Against the Applicant.
Subpara. 1.e.:	Against the Applicant.
Subpara. 1.g.:	Against the Applicant.
Subpara. 1.h.:	Against the Applicant.

Paragraph 2: Against the Applicant.
Subpara. 2.a.: Against the Applicant.
Subpara. 2.b.: Against the Applicant.

Conclusion

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 the Applicant.

Darlene Lokey-Anderson
Administrative Judge