

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a 28-year-old employee of a federal government contractor. Applicant was born in the United States while her parents were in this country from Iran, furthering their education. Applicant's parents took her to Iran in 1984, where she lived until she returned to the U.S. in 2002. Applicant's father is deceased. Her mother and sister are citizens and residents of Iran. Applicant voted in Iranian elections in 1998, because she believed she would be denied entrance to college if she did not. Applicant possesses a valid current Iranian passport, because it is the only way she can enter Iran to visit her mother and sister. Applicant has not mitigated the foreign preference and foreign influence concerns. Eligibility is denied.

CASENO: 06-22274.h1

DATE: 05/29/2007

DATE: May 29, 2007

In re:)	
)	
-----)	
SSN: -----)	ADP Case No. 06-22274
)	
Applicant for Public Trust Position)	
)	

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

APPEARANCES

FOR GOVERNMENT

Caroline Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 28-year-old employee of a federal government contractor. Applicant was born in the United States while her parents were in this country from Iran, furthering their education. Applicant's parents took her to Iran in 1984, where she lived until she returned to the U.S. in 2002. Applicant's father is deceased. Her mother and sister are citizens and residents of Iran. Applicant voted in Iranian elections in 1998, because she believed she would be denied entrance to college if she did not. Applicant possesses a valid current Iranian passport, because it is the only way she can enter Iran to visit her mother and sister. Applicant has not mitigated the foreign preference and foreign influence concerns. Eligibility is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue Applicant's eligibility for an ADP I/II/III position. As required by Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation), and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), DOHA issued a Statement of Reasons (SOR) on January 29, 2007, detailing the basis for its decision—concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on February 26, 2007, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel, in accordance with ¶ E3.1.7 of the Directive, requested a hearing. The case was assigned to me on April 11, 2007. A notice of hearing was issued on April 16, 2007, scheduling the hearing for May 7, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility to occupy an ADP I/II/III position. DOHA received the hearing transcript (Tr.) on May 14, 2007.

RULINGS ON PROCEDURE AND EVIDENCE

The Government offered two exhibits that were marked as Government Exhibits (GE) 1 and 2, and admitted without objection. The list of exhibits was marked as Hearing Exhibit (HE) XI.

Department Counsel requested administrative notice be taken of the facts contained in HE X. 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 - 2006: Iran, dated March 6, 2007 (HE V); U.S. Department of State, Country Reports on Terrorism, dated April 30, 2007, excerpts (HE VI); Statement of Director of Central Intelligence Agency, General Michael V. Hayden, before the Senate Select Committee on Intelligence, dated January 11, 2007 (HE VII); Statement of Director of Central Intelligence Agency, General Michael V. Hayden, before the Senate Armed Services Committee, dated November 15, 2006 (HE VIII) and President of the United States, the National Security Strategy of the United States of America, dated March 2006 (HE IX). I took administrative notice of the facts contained in HE I through IX, as substantially stated in HE X.

Applicant testified and called two witnesses. She did not submit any documentary evidence.

FINDINGS OF FACT

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 28-year-old employee of a federal government contractor. She has worked for the same employer since 2004. Applicant is a college graduate of a university in Iran, and has a Master of Science degree from an American university. She is single, with no children.¹

Applicant's mother and sister are citizens and residents of Iran. Her father passed away in 2004. Applicant's parents came to the United States before she was born to further their education. Applicant was born in the U.S. in 1979, and is therefore a U.S. citizen. Since her parents are Iranian, she is also an Iranian citizen. Applicant's parents returned with her to Iran in about 1984. Applicant's sister was born in Iran, and is not a U.S. citizen. Applicant's mother is a college professor and her sister is a student. Applicant lived in Iran from 1984, until she returned to the U.S. in 2002. Applicant visited Iran in 2003, and twice in 2004. Her second trip in 2004, was to attend her father's funeral.²

Applicant inherited approximately \$50,000 to \$80,000 from her father's estate. She has received about \$10,000 thus far. Applicant expects to receive about another \$20,000 from the estate. Applicant owns her house in the United States, and has about \$20,000 in savings.³

Applicant voted in an Iranian election in about 1998. She voted before she was accepted into college. Applicant was concerned that if she did not vote that she would be denied entry into college.⁴

Applicant possesses a valid current Iranian passport. It was issued in about 2000, and expires in about 2010. She used her Iranian passport to enter Iran on her trip in 2003, and on her two trips in 2004. Since Iran does not recognize dual citizenship, she cannot travel to Iran on her U.S. passport. Applicant's mother and sister plan on immigrating to the United States. Applicant is unwilling to give up her passport as long as her mother and sister remain in Iran.⁵

Applicant speaks with her mother and sister via the telephone about every other day. They visited her in the U.S. in 2006, and again in 2007. Applicant's mother brought Applicant's \$10,000 inheritance with her on one of the trips and gave it to Applicant. Applicant does not intend to ever return to Iran to live. She intends to remain in the U.S.⁶

¹Tr. at 23, 25, 29, 43; GE 1, 2.

²Tr. at 23-28, 32, 38-39; Applicant's response to SOR; GE 1, 2.

³Tr. at 23, 40-42; Applicant's response to SOR; GE 2 at 5.

⁴Tr. at 30-31; Applicant's response to SOR; GE 2.

⁵Tr. at 23, 35; Applicant's response to SOR; HE II.

⁶Tr. at 33, 39-41, 45.

Character witnesses on Applicant's behalf testified that she is an excellent person and employee, and that she is very reliable and trustworthy. The witnesses recommended Applicant for an ADP position.⁷

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.⁸ 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."⁹

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.¹⁰

Iran's intervention in the internal affairs of Iraq is also a concern.¹¹

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.¹²

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.¹³

_____ 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

⁷Tr. at 46-55.

⁸HE II at 1; HE V at 1; HE X at 2.

⁹HE I at 7; HE IX at 20; HE X at 1-2.

¹⁰HE I at 8; HE X at 2.

¹¹HE I at 8; HE IV at CRS-23-24; HE X at 2-4.

¹²HE VI; HE IV at CRS-22; HE X at 3.

¹³HE V; HE X at 5.

Iran does not recognize dual citizenship. As a result, U.S.-Iranian dual citizens have been detained and harassed by the Iranian government.¹⁴

POLICIES

The revised Adjudicative Guidelines are used to make ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any determination may be made.¹⁵

An individual may not be assigned to perform sensitive duties unless a competent security authority determines it is clearly consistent with the interests of national security to do so.¹⁶ Positions designated as ADP I or ADP II are classified as sensitive positions.¹⁷ ADP III positions are “nonsensitive positions.”¹⁸ However, DOHA has been directed by a memorandum from the Deputy Undersecretary of Defense (Counterintelligence and Security) dated November 19, 2004, to apply the due process provisions of the Directive for all trustworthiness determinations under ADP I, II, and including ADP III positions. Thus, even though ADP III positions are nonsensitive, they are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

“The standard that must be met for ... assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that ... assigning the person to sensitive duties is clearly consistent with the interests of national security.”¹⁹ The government has the burden of proving controverted facts.²⁰ The burden of proof is something less than a preponderance of evidence.²¹ 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 or her.²² Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²³ The clearly consistent standard indicates that security clearance

¹⁴HE II; HE III; HE X at 5-6.

¹⁵Regulation ¶ C8.2.1.

¹⁶Regulation ¶ C2.1.2.

¹⁷Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

¹⁸Regulation ¶ C3.1.2.2.

¹⁹Regulation ¶ C6.1.1.1.

²⁰ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

²¹*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²²ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²³ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

determinations should err, if they must, on the side of denials.²⁴ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁵ 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.²⁶ The same rules apply to trustworthiness determinations for access to sensitive positions.

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each determination 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 AG ¶ 2(a).

Conditions that could raise a concern and may be disqualifying, as well as those which would mitigate concerns, 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 C: Foreign Preference

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.

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) 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 includes but is not limited to: (1) possession of a current foreign passport; . . . (7) voting in a foreign election*) applies in this case. Applicant possesses a valid current Iranian passport, and voted in Iranian elections while a U.S. citizen.

I have considered all the Foreign Preference Mitigating Conditions (FP MC), and I especially considered FP MC 11(a) (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*), FP MC 11(b) (*the individual has expressed a willingness to renounce dual citizenship*), and FP MC 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*). Applicant was a minor when her parents returned to Iran. She had no choice in where she lived when she was a minor, but she actively exercised her dual citizenship while an adult by voting in Iranian elections, and by

²⁴ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁵*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²⁶Exec. Or. 10865 § 7.

obtaining and using an Iranian passport. I do not find FP MC 11(a) totally applicable because she actively exercised her dual citizenship. Applicant may be willing to give up her Iranian passport and renounce her dual citizenship in the future, if her mother and sister immigrate to the United States. FP MC 11(b) does not apply because Applicant has not expressed a current willingness to renounce dual citizenship. FP MC 11(c) is not applicable because she voted and used an Iranian passport while an adult.

Guideline B: Foreign Influence

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. This raises a security concern under the foreign influence guideline. 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.

I considered Foreign Influence Disqualifying Condition (FI DC) 7(a) (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*) and FI DC 7(e) (*a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation*). Iran is a country that is clearly hostile to the United States.²⁷ It is considered the most active state sponsor of terrorism, and the government of Iran has committed numerous, serious human rights abuses against its people. Applicant's immediate family in Iran creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant expects to receive about \$20,000 from her father's estate in Iran. That is a substantial financial interest in a foreign country, which could subject Applicant to a heightened risk of foreign influence or exploitation. FI DC 7(a) and FI DC 7(e) are applicable.

I considered all the Foreign Influence Mitigating Conditions (FI MC), and especially FI MC 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 that 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.*), FI MC 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, organization, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*), and FI MC 8(f) (*the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual*).

²⁷ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007); HE III at 1.

Because of Iran’s hostility to the U.S., support for terrorism, and willingness to subject their citizens to human rights abuses, I find FI MC 8(a) does not apply. Applicant remains extremely close to her mother and sister. While I do not doubt her sincerity, and I found her testimony credible, Applicant has not convinced me that I should find FI MC 8(b) totally applicable. Applicant expects to receive an additional \$20,000 from her father’s estate. That is a considerable sum, even when considering Applicant’s U.S. assets. After hearing Applicant testify, and considering her character evidence, I am convinced that this money could not be used effectively to influence, manipulate, or pressure her. FI MC 8(f) is applicable to SOR ¶ 2.c.

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 and AG ¶ 2(a). I have also considered every finding of fact and conclusion discussed above.

Applicant was born in this country while her parents were furthering their education. They returned to Iran in about 1984, and Applicant lived there until she returned to the U.S. in 2002. Applicant voted in Iranian elections in about 1998, because she thought she might be denied acceptance into college if she did not. She possessed and used an Iranian passport because that is the only way she can travel to Iran to visit her family. I found Applicant to be a credible witness, and I believe her witnesses that she is a reliable, trustworthy person. I do not believe her inheritance can be used against her by the government of Iran. Her inheritance is only money. I cannot say the same thing regarding her family. As addressed above, Iran is a state sponsor of terrorism, is clearly hostile to the U.S., and has a terrible human rights record. Applicant’s family, which she clearly loves, makes her vulnerable to pressure, coercion, exploitation, or duress from the Iranian government.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the concerns based on foreign preference and foreign influence issues, and has not met her burden of demonstrating that it is clearly consistent with the national interest to grant her eligibility for an ADP I/II/III position.

FORMAL FINDINGS

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

Paragraph 1. Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2. Guideline B:	AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is denied.

Edward W. Loughran
Administrative Judge