



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



In the matter of:)	
)	
)	ISCR Case No. 13-00619
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

03/06/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on January 28, 2013 and August 17, 2010. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 12, 2013, detailing security concerns under Guideline B, foreign influence, and Guideline C, foreign preference. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on October 4, 2013. She submitted a notarized, written response to the SOR allegations dated October 5, 2013, and she requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on November 25, 2013. Applicant received the FORM on December 20, 2013. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response dated December 23, 2013. DOHA assigned this case to me on February 20, 2014. The Government submitted 12 exhibits, which have been marked as Government Exhibits (Gov E) 1-12 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Gov E 3, and the SOR has been marked as Gov E 1. Her written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Request for Administrative Notice

Department Counsel submitted a request that I take administrative notice of certain facts relating to Afghanistan and Iran. The request and the attached documents were not admitted into evidence, but were included in the record as Administrative Notice (Admin) 1, I-XXVII. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute, and they are set out in the Findings of Fact below.¹

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b of the SOR. Her admissions are incorporated herein as findings of fact. She

¹The information submitted included seven Department of Justice press releases concerning cases involving the export of controlled goods to Iran without obtaining the proper licenses. This information contains no reference to Applicant or classified information. None of the cases involves Applicant personally, involve espionage, or involve espionage through any familial relationship. The information does reflect that certain individuals are willing to ship controlled goods abroad without complying with U.S. law. These documents do not show any involvement of the Afghan or Iranian governments in these incidents, although Iran would benefit from the goods received. See Admin VII-XI, XIII, XIV. The press releases reflect indictment of individuals and corporations on charges of conspiracy to export controlled items and exportation of controlled items in violation of Title 18, U.S.C. § 371 and Title 50, U.S.C. § 1702. There is no evidence that the Governments of Afghanistan and Iran were involved in, or sanctioned, this criminal activity. *Id.*

One press release discusses a criminal case concerning a murder-for-hire plot involving individuals in an Iranian organization which conducts sensitive covert operations outside Iran. Applicant is not personally involved nor does the case involve espionage or classified information. Admin IV. Three documents from the Department of State relate to the detention of United States and Canadian citizens and free expression arrests in Iran. These documents do not indicate that classified information or espionage is involved, but do highlight the risks to U.S. citizens traveling in Iran. Admin XVI-XVIII.

denied the factual allegations in ¶¶ 2.a and 2.b of the SOR.² She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 58 years old, seeks employment as a linguist for a DOD contractor. Her current employer hired her in January 2013, pending the grant of a security clearance. She worked as a linguist in Afghanistan for her employer from August 2010 until May 2012. In 2009 and 2010, she worked as a role player for a DOD contractor on a periodic basis. Between 2004 and 2010, she worked with her husband in a jewelry business, which he no longer operates.³

Applicant was born and raised in Afghanistan. Her father, father-in-law, and mother-in-law are deceased. Her mother, three brothers, four sisters, and their spouses are citizens and residents of the United States. Applicant married in 1978. Her husband was born in Afghanistan and is now a citizen and resident of the United States. Her 34-year-old daughter was born in Afghanistan, but is now a resident and citizen of the United States. Her son and 21-year-old daughter were born in the United States and reside in the United States. Her husband's three brothers are also residents and citizens of the United States.⁴

Applicant's husband owned a shoe factory in Afghanistan. After the Russians invaded Afghanistan in late 1979, the Russians threatened her husband's life because of his business. With her husband's family, she, her husband and their baby daughter fled Afghanistan to Iran in March 1980. Applicant had an Afghan passport which included her baby daughter, but her husband did not have a passport. Once they obtained a passport for her husband, she, her husband, and baby daughter moved to Germany in June 1980. The United States granted them refugee status, and they moved to the United States in November 1980. They have lived in the United States since 1980. Applicant became a U.S. citizen in March 1990.⁵

²When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

³Gov E 10 - Gov E 12.

⁴Gov E 8; Gov E 10; Gov E 12.

⁵Gov E 9 - Gov E 12.

The SOR raises a security concern about Applicant's husband's uncle and stepbrother, who are citizens of Afghanistan, residing in Iran. Her husband talks with his uncle by telephone once a year. Her husband last spoke with his stepbrother two years ago. Her husband saw his uncle and stepbrother in August 2007. Applicant does not talk with her husband's family members when her husband talks with them. Applicant has one cousin, who is a citizen and resident of Afghanistan. The cousin owns a shop in Afghanistan. Applicant last talked with her cousin by telephone more than one year ago, and she last visited with him in August 2007. Her telephone conversations with him are about family.⁶

Applicant obtained her first U.S. passport in March 1991. She renewed her U.S. passport in May 2001 and April 2010. She continues to have an active U.S. passport. In 2007, Applicant's mother requested a trip to Iran to see her dying sister, Applicant's aunt. Because her mother could not travel alone, Applicant applied for a visa with her U.S. passport, but her application was denied. She contacted the Embassy of Afghanistan and obtained an Afghan passport for herself, her mother, her husband, and one daughter in May 2007. The family used their Afghan passports to obtain an entry visa for Iran. Applicant took her elderly mother to Iran to visit her dying sister, Applicant's aunt, in July 2007. Applicant has not returned to Iran. Her aunt died in 2008.⁷

Applicant's Afghan passport expired in May 2010, and she has not renewed it. She gave her expired passport to her facility security officer. In October 2013, she formally renounced her Afghan citizenship. In her e-QIP, she stated that she had no plans to renounce her U.S. citizenship. In her response to the FORM, Applicant stated that she would chose her U.S. citizenship over any other citizenship. She considers herself hardworking and honest, and a loyal U.S. citizen.⁸

Applicant considers herself a citizen of the United States only. In her CI Screening questionnaire, Applicant stated that if she was captured while working in Afghanistan, she would not say anything, even if threatened with death. She considers herself honest and hard-working. She owns property in the United States, and her assets are in the United States. She does not have a criminal record, and her finances are good. Her family was not active in politics in Afghanistan when they lived there.⁹

Afghanistan

I take administrative notice of the following adjudicative facts. Afghanistan is an Islamic Republic and emerging democracy. With the support of the United States and

⁶Gov E 3; Gov E 8; Gov E 12.

⁷Gov E 3; Gov E 10; Gov E 12.

⁸Gov E 3; Gov E 9; Gov E 10; Gov E 12; AE A.

⁹*Id.*

other nations, its new government endeavors to build a new system of government and to rebuild the country's infrastructure. Its Army and police force are well trained. It continues to face significant challenges from the insurgency and terrorist organizations supported by the ousted Taliban and Al Qaeda. Security and violence remain a serious issue. The government is not complacent about the terrorist threat, the insurgency, or security issues; rather it actively seeks to eliminate all with the assistance of the United States and NATO. The new government is working to reverse a long legacy of serious human rights abuses, but serious problems remain. Afghanistan is now an active member of the international community, has signed a "Good Neighbor" declaration with six nations bordering it, and promotes regional cooperation. The United States supports the emergence of a broad-based government in Afghanistan and has made a long-term commitment to help Afghanistan rebuild itself. Sometime ago, the leaders of both countries concluded a strategic partnership agreement committing to a long-term relationship between both countries, which was signed on May 2, 2012. Despite its differences with the United States, Afghanistan continues to seek U.S. support as it moves forward towards democracy and stability. None of the documents offered in support of the request for administrative notice indicate whether Afghanistan is an active collector of U.S. intelligence information.¹⁰

Iran

I also take administrative notice of the following facts about Iran. In 1979, the Iranian Revolution occurred, which ended the rule of the Shah of Iran. In December 1979, Iranian rulers prepared a new constitution which defines the political, economic and social order of this Islamic Republic. Iran is now an authoritarian, constitutional, theocratic republic, dominated by Shi'a Muslim clergy. Although human rights violations are prohibited by law, the Iranian government does not enforce the law. Human rights violations continue, particularly against journalists who speak out against Iran's current government, minority religions, such as the Baha'i faith, and political activists, who oppose the current ruling regime. Serious mistreatment of prisoners occurs. Because Iran does not recognize dual citizenship, Iranian-born, naturalized U.S. citizens are considered solely Iranian citizens by the Iranian authorities, and are required to enter and exit Iran on an Iranian passport. While traveling or residing in Iran, they are subject to surveillance, search, harassment, arrest, and imprisonment. More recently, Iran has prevented a number of Iranian-American citizens from leaving Iran, and in some cases, Iran has charged individuals with espionage and being a threat to the regime, including American citizens, not of Iranian birth or descent.

Iran's government is hostile to the United States, and the United States does not have a diplomatic relationship with Iran. Current U.S. concerns about Iran are based on its efforts to acquire nuclear weapons and weapons of mass destruction, support for and involvement in international terrorism, and support of violent opposition to the Middle East peace process and efforts towards democracy. Iran has provided guidance, training, and weapons to Shia political and militant groups in Iraq and other Middle East

¹⁰HE 1.

countries. It also provides encouragement, training, funding, and weapons to anti-Israeli terrorist groups and other terrorists groups in its efforts to undermine the Arab-Israeli peace process, as well as advocating the destruction of Israel. The United States has designated Iran as a state sponsor of terrorism. In 1979 in Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Powers Act (50 U.S.C. 1701-1706). The national emergency continues. The United States continues to have significant concerns about Iran's plans to develop nuclear weapons and weapons of mass destruction. Iran actively seeks to obtain dual use technologies from the United States. Iran has dramatically increased the depth and complexity of its intelligence operations, including cyber capabilities, against the United States in recent years. Iran has shown more interest in recent years in attacking the United States at home.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The

Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

AG ¶ 10 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant applied to the Afghanistan Embassy and received an Afghanistan passport in May 2007. With the passport, she applied for and received a visa for a visit to Iran. She and some of her family members visited Iran in 2007. To obtain the Afghan passport, she took an action which gave recognition to her past Afghan citizenship. She also exercised a privilege of her Afghan citizenship. A security concern is established under AG ¶¶ 10(1)(a) and 10(b).

The foreign preference guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 11(a) through ¶ 11(f), and the following are potentially applicable:

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant’s Afghan passport expired nearly four years ago, and she has not renewed the passport. She travels on her U.S. passport. She voluntarily gave the

expired Afghan passport to her facility security officer. She has no intent to obtain another Afghan passport. She also formally renounced her Afghan citizenship to the Afghanistan Embassy in a letter dated October 2013, even though she had long believed herself to be only a U.S. citizen. Applicant's preference is to the United States, her adopted country. Her actions in 2007 do not show a preference to Afghanistan or Iran, only an effort to take her elderly mother to see her mother's dying sister in Iran. She has mitigated the security concerns about her foreign preference under AG ¶¶ 11(b) and 11(e).

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding 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. 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

- (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
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's husband, children, mother, three brothers, four sisters, her siblings' spouses, and her three brothers-in-law are citizens and residents of the United States. Thus, no security concern is raised by these family members. Applicant's husband's uncle and stepbrother are citizens of Afghanistan and residents of Iran. Her cousin is a citizen and resident of Afghanistan. Her family relationships are not *per se* a reason to deny Applicant a security clearance, but her husband's contacts with his stepbrother and his uncle and her contacts with her cousin must be considered in deciding whether

to grant Applicant a clearance.¹¹ The Government must establish that these family create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between her obligations to protect sensitive information and her desire to help her cousin and husband's uncle and step-brother, who may be threatened by terrorists.

In determining if such a risk exists, I must look at Applicant's relationships and contacts with her extended family, as well as the activities of the Governments of Afghanistan and Iran and of terrorist organizations within Afghanistan and Iran. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with her extended family in Afghanistan and Iran raise a heightened risk and a security concern because of the terrorists activities in Afghanistan and the activities of the Iranian government. The evidence of record fails to show that the Afghan Government targets U.S. citizens in the United States or in Afghanistan by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Afghan Government will seek classified information is moderate. The same cannot be said about Iran or the terrorists organizations operating in Afghanistan, whose goals are to destroy or prevent the growth of a stable, central government. To the extent there are terrorist organizations in Iran, a concern is raised as the goal of such organizations is to harm the United States.¹²

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Afghanistan and Iran cause security concerns, I considered that Afghanistan and the United States have a relationship, which includes working together on international security issues and trade and that the United States and Iran do not have a working relationship. There is no evidence that the Afghan Government targets U.S. citizens for protected information; however, Iran has detained U.S. citizens for periods of time. The human rights issues in Afghanistan and Iran continue to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of her cousin in Afghanistan and her husband's uncle and stepbrother in Iran. These contacts raise a heightened risk under AG ¶¶ 7(a) and (b).

The foreign influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and the following are potentially applicable:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those

¹¹ISCR Case No. 09-06457 (App. Bd., May 16, 2011).

¹²*Id.*

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.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, 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

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant's contacts with her cousin and her husband's limited and casual contacts with his uncle and stepbrother are not likely to place Applicant in a position of having to choose between the interests of the United States and of Afghanistan or Iran. She does not talk or otherwise communicate with her husband's family members in Iran. Her contacts with her cousin are casual and infrequent. Thus, her foreign contacts are not likely to create a risk of foreign influence or exploitation. There is no evidence that these extended family members are involved with the Governments of Afghanistan or Iran. Applicant and her family members recognize the obligations they have to the United States. Applicant and her family are also loyal to the United States. In reviewing the record evidence, I find that Applicant can be expected to resolve any conflict of interest in favor of the United States. She has mitigated the Guideline B security concerns under AG ¶¶ 8(a)-(c).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful

consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Following the invasion of Afghanistan by Russia and threats to her husband and his family's well-being, Applicant, her husband, their baby daughter, and her husband's family fled Afghanistan to Iran. From Iran, they moved to Germany. In November 1980, they immigrated to the United States after being granted refugee status. They continue to live in the United States. Applicant and her family have immersed themselves in their life in the United States. They became citizens, obeyed the laws, and developed assets in the United States. For more than 30 years, their life has been in the United States. Applicant has no desire to return to Afghanistan. Her decision to obtain an Afghan passport was motivated by her mother's request to see her mother's dying sister in Iran, not out of a preference or affiliation with Iran. She has no intent to return to Iran. She prefers her U.S. citizenship to any other country. Her strongest family connections are now in the United States, not Afghanistan. Her family connections to Iran have never been strong. Neither of these past connections could be a source pressure, coercion, exploitation, or duress today as she would place the interests of the United States first. In reviewing and weighing the evidence of record, I find that Applicant has mitigated any security concerns raised.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her foreign influence and foreign preference under Guidelines B and C.

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, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Paragraph 2, Guideline B:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Subparagraph 2.b:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted .

MARY E. HENRY
Administrative Judge