



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



In the matter of:)	
)	
)	ISCR Case No. 14-02396
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

02/19/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On March 28, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on June 8, 2015. An amended notice of hearing was issued on September 18, 2015, scheduling the hearing for November 19, 2015.¹ Government Exhibits (GX) 1 and 2 were admitted into evidence without objection. Applicant testified, presented the testimony of her husband, and submitted Applicant Exhibits (AX) A-C, which were admitted without objection. The

¹The hearing was originally scheduled for September 8, 2015, but was postponed.

transcript was received on December 2, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Procedural Issue

Department Counsel requested that I take administrative notice of certain facts regarding Iran. Applicant did not object, and the documents proffered in support of the request were labeled Hearing Exhibit I and entered into the record.

Findings of Fact

In her answer to the SOR, Applicant admitted the SOR allegations under Guideline C and under Guideline B with explanations.

Applicant was born in Iran in 1966. She received her undergraduate degree in 1995 from an Iranian university. In 2003, she came to the United States. She became a naturalized citizen in 2009. She studied at an American community college for a time. She is married to a U.S. citizen and has three stepchildren and one biological child. She completed a security clearance application in 2013. She is an officer and a board member of her husband's company. (GX 1)

FOREIGN PREFERENCE

The SOR alleges under Guideline C that Applicant applied for and was issued an Iranian passport in July 2012, after having become a naturalized citizen in 2009.

Applicant applied for an Iranian passport in 2012. She stated that she needed the Iranian passport to "make a claim" on her family inheritance in Iran. (Tr. 42) The passport allowed her to execute a power of attorney to her brother to manage the family inheritance. (AX A) Applicant has now surrendered her foreign passport to the Facility Security Officer (FSO) of her husband's company. (Tr. 57) She never used the passport to travel. She has not been to Iran since she became a citizen of the United States. (Answer to SOR). She stated that she had to actively claim the inheritance because an unclaimed inheritance would be confiscated by the Iranian government. Her last Iranian passport expired in 2009 and she did not renew it. (Tr. 43)

Applicant's 2013 security clearance application notes that she considered herself a dual citizen of Iran and the United States from 1966 to 2013. (GX 1) She has taken no action to renounce her Iranian citizenship, although she mentioned in her 2014 interview that she would renounce her Iranian citizenship. (GX 2)

FOREIGN INFLUENCE

The SOR alleges under Guideline B (1.a-1.c) that Applicant's brother, sister-in-law, and niece are citizens and residents of Iran. It also alleges that Applicant co-owns with her siblings an apartment in Iran valued at about \$200,000. In addition, she co-owns with her siblings land in Iran valued at about \$200,000 to \$300,000.

Applicant's brother is the only immediate family member who lives in Iran. He was sponsored by their mother (who was a U.S. citizen) about 18 years ago for a green card. The process took about 12 years and when he was called for an interview the case was closed because his mother had died. This occurred in 2007. (Tr. 9) In 2010, Applicant, who was now a U.S. citizen, sponsored her brother's immigration petition. He, his wife, and children started a new application in 2010, which is still in process. (AX C)

Applicant's brother is married. His wife and children reside in Iran. He is the owner of a shipping company. (GX 2) He speaks Farsi and does not speak English. (Tr. 36) Applicant visited him in 2006 and 2008. She stayed in his home when she was in Iran. She noted in her security clearance application that her last contact with him was in 2013. She speaks to him on the telephone two or three times monthly. (GX 1) Applicant acknowledges that she loves her brother and his family. Also her son engages in video chats with his cousins. (Tr. 63)

Applicant's niece is 14 years old. Applicant provided financial support to her so that she could take English lessons. She paid for about ten months of lessons. Her brother advised that the lessons were not "effective" and so Applicant stopped sending money for them. (Tr. 39) She reports that she sent about \$5,000 for the lessons.

Applicant's other siblings are citizens and residents of the United States. They are also dual citizens of Iran and United States. Applicant's husband, who is a U.S. citizen by birth, holds a security clearance. He testified that Applicant's brother has been consistently denied a visa to come to the United States. He did not provide an explanation as to why. Applicant's husband owns several companies. Applicant is employed in one of them, where she has worked as an administrator since 2010.

Applicant's father died in 2012. He owned an apartment and unimproved land in Iran. When he died, Applicant and her siblings inherited the apartment and the land. Her brother inherited two-thirds of the apartment by law. Applicant inherited her share of the apartment which was valued at \$200,000. In her 2014 interview, she listed the value of the land as approximately \$300,000. (GX 2) She also stated that she took her share and helped her brother buy a new apartment in which she has a 20% share. (Tr. 59)

At the hearing, Applicant stated that she really does not have an interest in the apartment because her brother's name is on the title, and he is living in the apartment. She believes she does not have a legal interest in the property since her brother's name is on the title. (AX B) She explained that she just learned about the title a few days ago. (Tr. 52) The land has not been sold. She would eventually dispose of any property or assets from Iran. She could not legally do so now due to the sanctions on Iran. She will contact her brother to resolve the situation. Applicant was adamant that she does not need the money. (Tr. 63)

Applicant is involved in community affairs. She volunteers in her child's school. Applicant and her husband own substantial interests in the United States. She stated that she and her husband have a net worth of \$15 million dollars in U.S. real estate.

ADMINISTRATIVE NOTICE

Islamic Republic of Iran

In January 2012, the Director of National Intelligence assessed that the most menacing foreign intelligence threats in the next two to three years will involve espionage by China, Russia, and Iran, and that the foreign intelligence services of these three countries will remain the top threats to the United States in the coming years. He also assessed that Iran's intelligence operations against the United States, including cyber capabilities, have dramatically increased in recent years in depth and complexity.

In February 2014, the Director of National Intelligence assessed that Iran and North Korea are unpredictable actors in the international arena. Their development of cyber espionage or attack capabilities might be used in an attempt to either provoke or destabilize the United States or its partners.

The U.S. Government does not have diplomatic relations with Iran. The United States has long-standing concerns over Iran's nuclear program, sponsorship of terrorism, and human rights record. The current Iranian government still has not recognized Israel's right to exist, has hindered the Middle East peace process by arming militants, including Hamas, Hezbollah, and Palestinian Islamic Jihad, and continues to play a disruptive role in sustaining violence in the region, particularly in Syria.

Iran will continue to act assertively abroad in ways that run counter to U.S. interests and worsen regional conflicts. Iranian officials almost certainly believe that their support has been instrumental in sustaining Assad's regime in Syria and will probably continue support during 2016 to bolster the regime. In the broader Middle East, Iran will continue to provide arms and other aid to Palestinian groups, Houthi rebels in Yemen, and Shia militants in Bahrain to expand Iranian influence and to counter perceived foreign threats.

In 2013, the U.S. Department of State reaffirmed its 1984 designation of Iran as a State Sponsor of Terrorism, denoting the U.S. Government's determination that Iran has repeatedly provided support for acts of international terrorism.

In March 2015, the U.S. Department of State renewed its commitment to the safe return of Robert Levinson, who disappeared eight years ago while on a business trip to Iran, and is one of the longest held American citizens in history.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied

in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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." ⁵ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. ⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, “[W]hen 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.”

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election;

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

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant became a naturalized U.S. citizen in 2009. She applied for an Iranian passport in 2012. AG ¶ 10(a)(1) applies.

AG ¶ 11 provides conditions that could mitigate security concerns:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (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;
- (d) use of a foreign passport is approved by the cognizant security authority.
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
- (f) the vote in a foreign election was encouraged by the United States Government.

Applicant obtained an Iranian passport in 2012 because she needed identification to give a power of attorney to her brother in Iran after the death of their father. This was due to an inheritance issue. Applicant stated she surrendered her passport from Iran to the FSO of her husband's company before the hearing. She did not provide any documentation to corroborate her statement. At the time she had an Iranian passport she did not have a security clearance or have any reason to understand the import of such. No one advised her that this could be an issue. AG ¶ 11(e) applies. Applicant has mitigated the security concerns under the foreign preference guideline.

Guideline B, Foreign Influence

The security concern under Guideline B is set out in AG ¶ 6 as follows:

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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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.” AG ¶ 7(b).

Applicant’s, brother, sister-in-law, and niece are citizens and residents of Iran. Applicant maintains contact with them. She provided some financial support for her niece. Security concerns could arise in connection with the potential that hostile forces might seek classified information from Applicant by threatening harm or offering benefits to her relatives in Iran. Based on this evidence, AG ¶¶ 7(a) and 7(b) are raised.

A disqualifying condition may also be raised by “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.” AG ¶ 7(e) Although Applicant declared that the apartment and land inherited from her father is titled in her brother’s name and she does not believe that she will inherit that property, she has an interest in her father’s estate. She proceeded to protect her interest by obtaining the Iranian passport. She had reported that the stake in estate ranges from \$200,000 to \$500,000. There is some confusion as to the title in her brother’s name, but the proper distribution is a matter of concern to Applicant. I conclude this disqualifying condition is raised.

Since the Government produced evidence to raise disqualifying conditions in AG ¶¶ 7(a), (b) and (e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

The nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Family ties with persons in a foreign country are not, as a matter of law, automatically disqualifying under Guideline B. However, such ties raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for applicant. Iran's hostility to the United States, repressive government, and abysmal human rights record place a "very heavy burden of persuasion" on Applicant to demonstrate that her family members and financial interests in Iran do not pose a security risk. See ISCR Case No. 04-11463 at 4 (App. Bd. Aug 4, 2006).

Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant's brother wants to live in the United States, but as long as he and his family live under the repressive and hostile government of Iran, Applicant may be placed in a position of having to choose between the interests of her brother and his family and the interests of the United States. This mitigating condition is not established.

Similarly, AG ¶ 8(b) can mitigate concerns when "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." Applicant has loyalties to the United States. She is married to a U.S. citizen and has a family in the United States. She also has loyalty to her brother and his family in Iran, and is still involved with the inheritance issue. Her willingness to obtain the Iranian passport in 2012 to take some control of the inheritance issue to give her brother a power of attorney undercuts the application of this mitigating condition.

AG ¶ 8(c) can mitigate if "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." There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb, 1, 2002). Applicant has not rebutted the presumption. Applicant talks with her brother and his family monthly, and they are in the process of resolving the inheritance issue about her father's estate. She is sponsoring him for entrance to the United States. This mitigating condition is not established.

Security concerns based on foreign property also can be mitigated by showing "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 to effectively influence, manipulate, or pressure the individual." AG ¶ 8(f). While the value of Applicant's

inheritance pales in comparison with her financial wealth in the United States, Applicant's assets in Iran are still significant. I conclude this mitigating condition is not established.

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 the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. The factors weighing towards approval of Applicant's security clearance are noteworthy; however, they are less substantial than the factors weighing against its approval. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or committed any security violations. She is a naturalized U.S. citizen and is married to a U.S. citizen. She and her family reside in the United States. She is involved in community activity. She has significant wealth in the United States. These financial components are important economic connections to the United States. Her loyalty to the United States is not an issue. There is no evidence that terrorists or other foreign elements have specifically targeted Applicant or her family. Nevertheless, her brother's Iranian citizenship and distribution of her father's estate makes her vulnerable to exploitation.

A Guideline B decision concerning Iran must take into consideration the geopolitical situation and dangers there. See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007). Iran is a dangerous place. Iran supports terrorists who threaten the interests of the United States, and those who cooperate and assist the United States. Iran aggressively seeks intelligence information from the United States. The United States and Iran have recently discussed agreement to lift economic sanctions against Iran and for Iran to permit inspections for nuclear-weapon development in Iran. Notwithstanding, Iran and the United States continue to have profound policy disputes.

Unresolved significant foreign influence security concerns from Applicant's brother and his family living in Iran warrant greater weight than her connections to the United States. Applicant acknowledges her love for her brother and his family. She communicates with her brother and his family. She stayed with her brother in Iran during her visits before she became an American citizen. Applicant's connection to her brother and the inheritance issue make Applicant more vulnerable as a target of coercion of lawless elements in Iran, including the Iranian government.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign preference concerns are mitigated; however the Applicant has not carried her burden and foreign influence concerns are not mitigated at the this time. Eligibility for access to classified information is denied.

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 B :	AGAINST APPLICANT
Subparagraphs 1.a-e:	Against Applicant
Paragraph 2, Guideline C :	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge