

KEYWORD: Foreign Preference; Foreign Influence; Personal Conduct

DIGEST: Applicant is 28 years old and works for a defense contractor. She and her family emigrated from Iran in 1990 to enjoy more freedom. Even after becoming a U.S. citizen in 2000, she traveled to Iran using an Iranian passport. She uses her Iranian passport to enter Iran because she could not do it with her U.S. passport. Her high school diploma is Iranian, issued after she passed an Iranian curriculum of study in the U.S. using free textbooks supplied by the Iranian government, and she studied in an Iranian university for one semester in 1996. She failed to disclose that residence and study on her security clearance application. She has relatives in Iran with whom she is frequent contact and whom she visits on her trips. Applicant did not mitigate the foreign preference security concern, the foreign influence security concern, nor the personal conduct security concern. Clearance is denied.

CASENO: 05-01950.h1

DATE: 02/22/2006

DATE: February 22, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01950

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 28 years old and works for a defense contractor. She and her family emigrated from Iran in 1990 to enjoy more freedom. Even after becoming a U.S. citizen in 2000, she traveled to Iran using an Iranian passport. She uses her Iranian passport to enter Iran because she could not do it with her U.S. passport. Her high school diploma is Iranian, issued after she passed an Iranian curriculum of study in the U.S. using free textbooks supplied by the Iranian government, and she studied in an Iranian university for one semester in 1996. She failed to disclose that residence and study on her security clearance application. She has relatives in Iran with whom she is frequent contact and whom she visits on her trips. Applicant did not mitigate the foreign preference security concern, the foreign influence security concern, nor the personal conduct security concern. Clearance is denied.

STATEMENT OF THE CASE

On August 18, 2005, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personnel security Guideline C (Foreign Preference), Guideline B (Foreign Influence), and Guideline E (Personal Conduct) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated September 14, 2005, Applicant responded to the SOR allegations. Applicant requested her case be decided on the written record in lieu of a hearing.

On October 4, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of

relevant material (FORM) was provided to the Applicant. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM within the scheduled due date of November 9, 2005. The case was assigned to me on November 28, 2005.

FINDINGS OF FACT

Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 28 years old and works for a defense contractor. She was born in Iran, as were her parents and sister. All of them immigrated to the U.S. in the summer of 1990 because her parents wanted to have more freedom and escape the strict laws and fundamentalist rule of the Iranian government. Applicant obtained an Iranian passport on August 5, 1996. In August 2000, Applicant and her family became naturalized U.S. citizens. She renewed the Iranian passport in 2001. It expires on August 5, 2006. She also has a U.S. passport, issued after she became a U.S. citizen. Applicant has not surrendered her Iranian passport. She used it in June to August 1996, July and August 1997, May to July 1998, July and August 1999, July and August 2000, and January to February 2003 to travel to Iran to visit her grandmother and cousins, who are Iranian citizens and residents. Applicant also traveled to Iran two or three times yearly from the summer of 1991 to the summer of 1996. She has weekly telephone contact with her grandmother. She used the Iranian passport even after 2000 when she became a U.S. citizen because it was easier to enter Iran with that passport than a U.S. passport. (Items 4 and 5)

Applicant completed her security clearance application (SCA) on April 22, 2003. In answer to Question 4, "Where have you lived?", Applicant disclosed only residences in the U.S. She did not disclose that she lived in Iran while attending an Iranian university from September 1996 until February 1997. She claimed it was only a short time and forgot to disclose it. (Items 4 and 5)

Applicant did not disclose on her SCA in answer to Question 5, "Where you went to school" her attendance at the Iranian university from September 1996 to February 1997. Applicant was home schooled in the U.S. before attending college, using an Iranian curriculum and books provided free by the Iranian government, from 1990 to 1996. Applicant traveled to Iran to take her school examinations there. She received an Iranian diploma in 1996. She then chose to attend an Iranian university. She returned to the U.S. in 1997 to attend a better engineering university. (Items 3-5)

Applicant did not disclose on her SCA in answer to Question 3, "Are you now or were you a dual citizen of the U.S. and another country." Applicant answered "no", when she also held Iranian citizenship that enabled her to obtain and retain her Iranian passport. Applicant claims Iranian law does not permit her to renounce her Iranian citizenship. She

expressed a willingness to do so, and to surrender her Iranian passport, but has not taken an actions to effectuate those intentions. (Items 3-5)

Applicant did not disclose on her SCA in response to Question 16, "Foreign Countries You Have Visited", that from September 1996 to February 1997, she visited Iran, living there and studying at an Iranian university. Applicant claims she did not disclose it because of an oversight. (Items 3-5)

In 2004 Applicant traveled for about 10 days in Germany and the Czech Republic, financing the trip from savings. In February and March 2004, for about six days, she traveled to Argentina on vacation, paying for that trip with her savings. Applicant traveled to Germany in 2003 to sightsee and visit her former boyfriend. She financed that trip from her savings. She traveled for over a month through France, Italy, Switzerland, and Germany in 2002, the trip costing her \$3,000 from her savings. In 2001 she traveled to Germany to visit her former boyfriend and a friend from Iran, financing the trip with her savings. In 1999 she traveled to England, Iran, and Germany with her family. Her parents paid for that trip. She traveled to Iran from January 15 to February 15, 2003, to visit her grandmother and have laser eye surgery. Applicant claimed the eye surgery was cheaper in Iran. On other trips to Iran Applicant would visit physicians and have her medical checkups. Applicant worked from April 2002 to July 2002 as an intern, and before that from September 2001 to March 2002 as an office assistant at a U.S. university. Her next employment was an intern with a federal contractor from September 2002 to December 2002. Since February 2003 she worked for a defense contractor. (Items 3-5)

Iran is a theocratic state that is a state sponsor of terrorism and has an extremely poor human rights record. Its foreign policy is anti-U.S. policy. The International Atomic Energy Agency is strongly critical of Iranian nuclear weapons acquisitions efforts, its uranium enrichment policies and efforts, and lack of cooperation with the international community on nuclear anti-proliferation policies. Iranian human rights violations include political killings, criminalizing of dissent, restrictions on freedoms of press, religion, and assembly. The Iranian government denies fair trials and engages in arbitrary arrest practices. (Items 6A-6D)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline C: Foreign Preference: *The Concern: 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. E2.A3 .1.1.*

Guideline B: Foreign Influence: *The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. E2.A2.1.1.*

Guideline E: Personal Conduct: *The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. E2.A5.1.1*

The memorandum dated August 16, 2000, signed by Assistant Secretary of Defense Arthur L. Money (Money Memo), is additional guidance regarding "the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The memorandum specifically provides that "current possession or use of a foreign passport" may be a disqualifying condition. It further states, "The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."

CONCLUSIONS

The Government presented substantial evidence to support the allegations in the SOR. Applicant's admissions to the SOR allegations, evaluated with all the other evidence, lead me to these conclusions.

Considering Guideline C, the Government has clearly shown that Applicant has an unexpired Iranian passport and has exercised Iranian citizenship by her use of that passportage to make entry into Iran easier for her. Her travels around the

world, particularly since 2000, cost her significant money, for one trip \$3,000, but she traveled to Iran to have eye surgery because it was cheaper than in the U.S. She obtained her high school degree using Iranian textbooks, an Iranian curriculum, traveling to Iran to take her school examinations, being issued an Iranian diploma, and attended an Iranian university for six months, all while living in the U.S.. Disqualifying Conditions (DC) 1 (*The exercise of dual citizenship. E2.A3.1.2.1*), DC 2 (*Possession and/or use of a foreign passport. E2.A3.1.2.2*), and DC 4 (*Accepting educational and medical benefits from a foreign country. E2.A3.1.2.4*) apply.

Mitigating Conditions (MC) 1 (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1*), and MC 2 (*Indicators of possible foreign preference occurred before obtaining United States citizenship. E2.A3.1.3.2*), and MC 4 (*Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4*). Applicant expressed her willingness to renounce her Iranian citizenship and surrender her Iranian passport in 2003, but presented no information that since then she did anything to accomplish those renunciations, although there is no requirement that she renounce. While her high school education and semester of college were accomplished according to Iranian curricula and using Iranian textbooks, they were done before Applicant became a U.S. citizen in 2000. Yet her renewal of her Iranian passport in 2001, and her travels to Iran in 2001 and 2003 using that passport show a preference for Iran over the U.S. Her eye surgery was done after she obtained her U.S. citizenship because of a cheaper cost there than here, but Applicant also spent a lot of money on her international travels over the years 1996 to 2004. Her actions in continuing to use the Iranian passport after obtaining U.S. citizenship to enter Iran shows a foreign preference for Iran.

Additionally, the "Money Memo" requires denial of a security clearance if the foreign passport is not surrendered. Applicant has not surrendered her Iranian passport. Therefore, considering all of the evidence, I conclude this guideline against Applicant.

Regarding the foreign influence security concern, Applicant has a grandmother and several cousins whom she visits in Iran when she travels there. She telephones her grandmother weekly.

Under these facts, Disqualifying Condition (DC)1 (*An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen or, or resident or present in, a foreign country. E2.A2.1.2.1*) applies.

The only Mitigating Condition (MC) that might apply would be MC 1 (*family members are not agents of a foreign power or in a position to be exploited by a foreign power in a way to force the Applicant to choose between family loyalty and loyalty to the U.S. E2A2.1.3.1*). This MC is applied in the conjunctive, not the disjunctive mode, such that both conditions must be met to have the MC apply. The Applicant has a heavy burden in those cases involving immediate family members living in a country hostile to the U.S. to show those family ties do not pose a security risk. (ISCR Case No. 02-04786 at 4 (App. Bd. Jun. 27, 2003); also see ISCR Case No. 02-13595 (App. Bd. May 10, 2005)) Here, Applicant has not met that burden because Iran is a country unfriendly to the U.S. and Applicant has not shown how her grandmother and young cousins would not be able to be exploited by the Iranian government forcing Applicant to choose between loyalty to her beloved grandmother and the U.S. It is reasonable to conclude the Iranian government would have no scruples about applying pressure to Applicant's family members. "Applicant's vulnerability to possible foreign influence through his siblings in Iran is the same whether or not the Iranian government has sought to exert such influence or pressure in the past." (ISCR Case No. 03-16516 at 7 (App. Bd. Nov. 26, 2004). Furthermore, "It is logical that a repressive government would be more likely than a non-repressive government to exploit persons under its control in order to extort cooperation out of a close relative." (ISCR Case No. 03-00526 at 4 (App. Bd. Apr. 7, 2005); *see also*

ISCR Case No. 02-13595 (App. Bd. May 10, 2005) For these reasons, Applicant has not met her burden. I conclude Guideline B against Applicant.

Regarding the personal conduct security concern through Applicant's failure to disclose her lengthy stay and study in Iran from September 1996 to February 1997, the DC applicable are DC 2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar form used to determine security clearance eligibility or trustworthiness E2.A5.1.2.2*) and DC 4 (*Personal conduct that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail. E2.A5.1.2.4*). In three questions on the SCA Applicant deliberately failed to disclose her semester study in Iran. Her explanation of it being an oversight and a short stay that did not seem like a residence is not persuasive. The questions are simple and direct, this time was a significant period of study in her life, and it is clear she was trying to hide it from the Government. This deliberate failure to disclose this important information makes Applicant vulnerable to coercion, exploitation, or duress. She has made no showing this study was widely known within her company, or even by her managers.

The MC that might apply do not. This failure to disclose requested information shows a pattern of non-disclosure on this one issue, so it is not isolated. It occurred less than three years ago on an important government document, so it is recent. Applicant made no showing that she provided correct information before being questioned by the Government investigator. Therefore, I conclude this guideline against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2 Guideline B: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e: Against Applicant

Paragraph 3 Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

DECISION

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

Philip S. Howe

Administrative Judge

