

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: The Applicant has renounced her Iranian citizenship, and destroyed her Iranian passport. She is a native born American, who obtained an Iranian passport in order to visit her in-laws in Iran, in 1996 and again in 1998. Her mother-in-law is a dual national with the U.S., and her father-in-law has a green card. However, they both reside in Iran. Her mother-in-law is a retired secretary, and her father-in-law is an architect. Neither in-law is in the employ of the Iranian government. As the Applicant has “longstanding relationships and loyalties in the U.S.,” it is unlikely that she “will be placed in a position of having to choose between the interests of . . . [her foreign relatives] . . . and the interests of the U.S.” Mitigation is shown. Clearance is granted.

CASENO: 06-25345.h1

DATE: 08/08/2007

DATE: August 8, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-25345

**DECISION OF ADMINISTRATIVE JUDGE
RICHARD A. CEFOLA**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has renounced her Iranian citizenship, and destroyed her Iranian passport. She is a native born American, who obtained an Iranian passport in order to visit her in-laws in Iran, in 1996 and again in 1998. Her mother-in-law is a dual national with the U.S., and her father-in-law has a green card. However, they both reside in Iran. Her mother-in-law is a retired secretary, and her father-in-law is an architect. Neither in-law is in the employ of the Iranian government. As the Applicant has “longstanding relationships and loyalties in the U.S.,” it is unlikely that she “will be placed in a position of having to choose between the interests of . . . [her foreign relatives] . . . and the interests of the U.S.” Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On January 30, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on February 16, 2007.

The case was received by the undersigned on March 15, 2007. A notice of hearing was issued on March 27, 2007, and the case was heard on April 10, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on April 19, 2007. The issues raised here are whether the Applicant's perceived Foreign Preference and Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 36, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. 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.

Guideline C - Foreign Preference

1.a.~1.d. and 2.c. The Applicant is a native born American (TR at page 16 lines 1~5). She married an Iranian national in 1994 (Government Exhibit (GX) 1 at page 3). He subsequently became a U.S. citizen in 1999 (*Id.*). She became a dual national with their marriage (TR at page 16 lines 6~14, and at page 19 line 5 to page 20 line 13). She obtained an Iranian passport in order to visit her in-laws in Iran, in 1996 and again in 1998 (TR at page 21 line 6 to page 22 line 7). The Applicant has recently renounced her Iranian citizenship, and destroyed her Iranian passport

(Applicant Exhibits (AppXs) D and E).

Guideline B - Foreign Influence

2.a. and 2.b. The Applicant's 71 year old mother-in-law is a dual national with the U.S., and her 75~76 year old father-in-law has a green card, as a permanent resident alien (TR at page 23 line 12 to page 27 line 14). They both currently reside in Iran (*Id*). Her mother-in-law is a retired secretary, and her father-in-law is an architect (TR at page 23 line 12 to page 27 line 14). Neither in-law is in the employ of the Iranian government (*Id*).

The Applicant would report any attempt at coercion vis-a-vis her in-laws to her "Security Officer," and to the appropriate U.S. authority (TR at page 29 lines 8~22).

Iran is a state that sponsors terrorism. The U.S. has not had diplomatic relations with Iran since 1980. It is a theocratic Islamic republic in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. Iran's dismal and worsening human rights record presents a further threat to the U.S., as a large number of Iranians emigrated to the U.S. in 1979, after their Islamic revolution. These immigrants often left behind family members in Iran. Iran's security forces often target family members of political prisoners for harassment purposes.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have

a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has demonstrated a Foreign Preference or who is subject to Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

CONCLUSIONS

The Applicant, until recently, was a dual national with Iran, and maintained an Iranian passport. The first disqualifying condition under Foreign Preference is therefore applicable as there was an "exercise of any right . . . of foreign citizenship after becoming a U.S. citizen This includes but is not limited to: (1) possession of a current foreign passport; . . ." The second disqualifying condition is also applicable, as there was "action to acquire or obtain recognition of a foreign citizenship by an American citizen." These are countered, however, by the second and fifth mitigating conditions. "[T]he individual has expressed a willingness to renounce dual citizenship," and "the passport has been destroyed . . ." Here, the Applicant has not only initiated the renunciation of her Iranian citizenship, but has also destroyed her Iranian passport.

The Applicant's in-laws are citizens of and reside in Iran. The first and second disqualifying conditions under Foreign Influence are arguably applicable as this contact "creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," and creates "a potential conflict of interests between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person . . . by providing that information." Under the facts of this particular case, however, these are clearly countered by the first and second mitigating conditions. The nature of the Applicant's relationship with her Iranian in-laws is "such that it is unlikely the individual will be placed in a position of having to choose between the interests of . . . [her family] and the interests of the U.S." Also, the Applicant "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."

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. Her Facility Security Officer (FSO) avers that she is "very trustworthy and reliable" (AppX A). The totality of the Applicant's conduct and circumstances, as set forth at length above, clearly warrants a favorable recommendation

under the “whole person concept.” Mitigation is shown. Guidelines B and C are found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her perceived Foreign Preference and Foreign Influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Foreign Preference FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

Paragraph 2: Foreign Influence FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola
Administrative Judge