

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant was born in Iran and lived with her father in Iran after her parents were divorced. She came to the U.S. in 1999. She visited her father in Iran from January to May 2001 during his illness and death. She became a U.S. citizen in April 2005. She renewed her Iranian passport after becoming a U.S. citizen, and she used it once to visit her ailing grandmother in Iran. She surrendered her Iranian passport after learning it raised security issues. Applicant's mother is a dual U.S.-Iranian citizen who lives in Iran half the time to care for her mother (Applicant's grandmother). Security concerns based on foreign preference are mitigated, but concerns based on foreign influence are not mitigated. Clearance is denied.

CASENO: 07-02998.h1

DATE: MM/DD/YYYY

DATE: September 11, 2007

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In re:	)	
	)	
-----	)	ISCR Case No. 07-02998
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Emilio Jaksetic, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant was born in Iran and lived with her father in Iran after her parents were divorced. She came to the U.S. in 1999. She visited her father in Iran from January to May 2001 during his illness and death. She became a U.S. citizen in April 2005. She renewed her Iranian passport after becoming a U.S. citizen, and she used it once to visit her ailing grandmother in Iran. She surrendered her Iranian passport after learning it raised security issues. Applicant's mother is a dual U.S.-Iranian citizen who lives in Iran half the time to care for her mother (Applicant's grandmother). Security concerns based on foreign preference are mitigated, but concerns based on foreign influence are not mitigated. Clearance is denied.

## **STATEMENT OF THE CASE**

On May 7, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence).

Applicant answered the SOR in writing on May 26, 2007, and requested a hearing. The case was assigned to me on July 16, 2007, and heard on August 14, 2007, as scheduled. I kept the record open until August 24, 2007, to enable Applicant to submit documentary evidence. I received her evidence on August 21, 2007, and it is admitted as Applicant's Exhibit (AX) A. DOHA received the transcript (Tr.) on August 24, 2007.

## **FINDINGS OF FACT**

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 24-year-old multifunctional information systems associate who has been employed by a defense contractor since her graduation from college in May 2006. She has a bachelor's degree in electrical engineering. She does not hold a clearance.

Applicant was born in Iran and came to the U.S. in 1999, intending to complete her education and live permanently in the U.S. (Tr. 35, 40). She became a U.S. citizen in April 2005. She is a dual citizen of the U.S. and Iran by virtue of her birth in Iran.

Applicant's mother and stepfather were born in Iran. Her biological father died in 2001 (Tr. 43). Her mother became a U.S. citizen in November 2000 (Government Exhibit (GX) 1 at 24), and her stepfather became a U.S. citizen in December 2006 (AX A at 3). Her mother and stepfather own a home in the U.S., but they reside about half the time in Iran, taking care of Applicant's

grandmother. At the time of the hearing, Applicant's mother was in the U.S. and her stepfather was in Iran (Tr. 45-46). Her mother intends to travel to Iran in October 2007 and remain until about May 2008 (Tr. 54-55).

Applicant's mother is not employed outside the home. Her stepfather is an architect employed by a private company in Iran (Tr. 51). He also owns an import business in the U.S., in partnership with Applicant's stepbrother (Tr. 60).

Applicant is not close to her stepfather. In Iran, she lived with her biological father after her parents were divorced, in accordance with Iranian custom (Tr. 61). After her father died and her mother remarried, she lived with them for only about one year (Tr. 62).

Applicant has a 26-year-old stepbrother who is a native-born U.S. citizen, and a 23-year-old stepsister who is a citizen of Iran. Both her stepbrother and stepsister reside in the U.S. (GX 1 at 27-29; Tr. 46). Applicant is not close to her stepbrother and stepsister.

At the time Applicant submitted her security clearance application, she had two roommates who were Iranian citizens (GX 1 at 30-31). They were sisters who fled from Iran because of religious persecution. One was a U.S. citizen and the other a permanent U.S. resident (Tr. 48). Applicant needed roommates because she could not afford to pay the full amount of the rent. She now lives with her mother (Tr. 47).

Applicant used her Iranian passport to visit Iran in 2000, 2001, and 2002. She renewed her Iranian passport in October 2005, after becoming a U.S. citizen, and she used it to visit Iran in December 2005. All her visits to Iran were short, about a week or two, except the trip in 2001, which lasted about six months due to the illness and death of her father (Tr. 43). She visited her elderly grandmother on each trip (Tr. 44). She testified she is "very close" to her grandmother, having grown up with her (Tr. 63). She has telephonic contact with her grandmother about once a year, but her grandmother is elderly, bedridden most of the time, has Alzheimer's disease, and usually doesn't remember Applicant (Tr. 52, 59).

At the hearing, Applicant expressed reluctance to surrender her Iranian passport because it would make it difficult for her to visit her grandmother. However, she surrendered her Iranian passport on August 17, 2007, after the hearing was adjourned (AX A at 2).

Regarding her dual U.S.-Iranian citizenship, Applicant testified: "I know United States is my country more than Iran is my country, because I really work here in this country and I'd love to live here for the rest of my life. I don't want any issue to be arising just because I'm Iranian or I'm holding Persian citizenship, because I don't have anything to do with that country." (Tr. 65.)

At Department Counsel's request, and without objection from Applicant, I took administrative notice of relevant adjudicative facts about Iran (Hearing Exhibit (HX) I; Tr. 26-28). Iran is a theocratic Islamic republic dominated by Shia Muslim clergy, with ultimate political authority vested in a learned religious scholar. 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; support for violent opposition to the Middle East peace process; and its human rights abuses, including summary executions, torture, arbitrary arrest and detention, and

restrictions on civil liberties. Iran has provided guidance, training, and weapons to Shia political and militant groups in Iraq. It also provides encouragement, training, funding, and weapons to anti-Israeli terrorist groups in its efforts to undermine the Arab-Israeli peace process (HX I at 2-4).

The U.S. has designated Iran as a state sponsor of terrorism. The U.S. broke diplomatic relations with Iran in April 1980, prohibits most trade with Iran, and uses multilateral sanctions and diplomatic pressure to contain the threats posed by Iran (HX I at 2-3).

Iran does not recognize dual citizenship. As a result, Iranian-born, naturalized U.S. citizens are considered solely Iranian citizens by the Iranian authorities, and they are subject to surveillance, search, harassment, arrest, and imprisonment while traveling or residing in Iran (HX I at 5-6).

## **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 with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in the Guidelines ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, 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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

## **CONCLUSIONS**

### **Guideline C (Foreign Preference)**

The SOR alleges that Applicant exercises dual U.S.-Iranian citizenship (SOR ¶ 1.a), renewed her Iranian passport after becoming a U.S. citizen (SOR ¶¶ 1.b and 1.c), and used her Iranian passport instead of her U.S. passport to travel to Iran in December 2005 (SOR ¶ 1.d). The concern under this guideline is as follows: “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.” AG ¶ 9. A disqualifying condition may arise from “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not limited to “possession of a current foreign passport.” AG ¶ 10(a)(1). Applicant’s possession and use of a current Iranian passport raise this disqualifying condition.

Although worded somewhat differently, SOR ¶¶ 1.b and 1.c allege essentially the same conduct, i.e., renewing her Iranian passport after becoming a U.S. citizen. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. *See* ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I resolve SOR ¶ 1.b in Applicant’s favor.

Since the government produced substantial evidence to raise the disqualifying condition in AG ¶10(a)(1), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. 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).

Security concerns under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(a). This mitigating condition is established.

Security concerns based on possession or use of a foreign passport also may be mitigated if “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” AG ¶ 11(e). This mitigating condition also is established.

### **Guideline B (Foreign Influence)**

The SOR alleges that Applicant’s mother is a citizen of Iran and the U.S. and resides in Iran (SOR ¶ 2.a); that her stepfather is a permanent resident of the U.S., a citizen of Iran, and resides in Iran (SOR ¶ 2.b); that Applicant’s roommates are citizens of Iran residing in the U.S. (SOR ¶ 2.c); that Applicant traveled to Iran in 2000, 2002, and December 2005 (SOR ¶ 2.d); and that she traveled to Iran from about January to May 2001 (SOR ¶ 2.e).

The concern under this guideline is 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.” AG ¶ 6.

Three disqualifying conditions under this guideline are relevant to this case. First, 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). Second, a disqualifying condition 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). Third, a security concern may be raised if an applicant is “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion” AG ¶ 7(d).

Applicant’s mother and stepfather are both naturalized U.S. citizens, but they are also Iranian citizens based on their place of birth. I conclude they are not “foreign” persons within the meaning of AG ¶¶ 7(a) and (b). However, they both reside in Iran about half the time, giving rise to the “heightened risk” in AG ¶ 7(a) and the “potential conflict of interest” in AG ¶ 7(b). I conclude that those two disqualifying conditions are raised.

Applicant currently resides with her mother. Her mother’s travel to and extended stays in Iran while caring for Applicant’s grandmother create “a heightened risk of foreign inducement, manipulation, pressure, or coercion,” thereby raising the disqualifying condition in AG ¶ 7(d).

Applicant’s relationship with her two roommates, one of whom was a U.S. citizen, was solely a matter of economic convenience, and it no longer exists. Accordingly, I resolve SOR ¶ 2.c in her favor.

Applicant’s five-month visit to Iran from January 2001 to May 2001 was related solely to the illness and death of her father. Security concerns based on the citizenship and residence of Applicant’s father and her visits with him in Iran were resolved by his death. Accordingly, I resolve SOR ¶ 2.e in Applicant’s favor.

Applicant’s grandmother is a “foreign” person, but her citizenship and place of residence are not alleged in the SOR. Accordingly, her grandmother’s citizenship and residence may not be considered as an independent basis for denying Applicant a clearance. However, conduct not alleged in the SOR may be considered “(a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.” ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). Applicant’s travel to Iran in 2000, 2001, 2002, and 2005 was directly related to her close relationship with her grandmother in Iran. I have considered the citizenship and residence of her grandmother

for the limited purpose of assessing the security concerns raised by Applicant's travel to Iran to visit her grandmother and her parents' extended visits to Iran to care for her grandmother.

Since the disqualifying conditions in AG ¶¶ 7(a), (b), and (d) are raised, the burden is on Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Security concerns under this guideline may 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).

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).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., 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 U.S.

Although Applicant has no strong ties to her stepfather, the presence of her mother and grandmother in Iran, a country hostile to the U.S. with an abysmal human rights record, may well create a conflict of interest between concerns for the health and safety of her mother and grandmother and the interests of the U.S. I conclude mitigating condition in AG ¶ 8(a) is established for her stepfather, but not for her mother and grandmother.

Security concerns under this guideline also may be mitigated by showing "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." AG ¶ 8(b). Applicant has no love for Iran and feels strong ties to the U.S., but her affection and sense of loyalty and obligation to her mother and grandmother are also very strong. I conclude AG ¶ 8(b) is established for her stepfather, but not for her mother and grandmother.

Security concerns under this guideline also may be mitigated by showing that "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.” AG ¶ 8(c). Applicant’s communication with her grandmother is infrequent but not casual. Her communication with her mother while her mother resides in Iran is neither casual nor infrequent. I conclude AG ¶ 8(c) is not established.

### **Whole Person Analysis**

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant’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. AG ¶¶ 2(a)(1)-(9).

Applicant is a relatively young woman who has lived in the U.S. for about eight years and has been a U.S. citizen for more than three years. She is enthusiastic about her life and professional opportunities in the U.S., and she has no affection for Iran or its government. All her family members except her grandmother are U.S. citizens. She is close to her mother and grandmother, but not her stepfather, stepbrother, and stepsister. For as long as her grandmother lives, and her mother continues to spend about half her time in Iran, Applicant will be vulnerable to pressure, coercion, exploitation, or duress.

I have weighed the enumerated disqualifying and mitigating conditions under Guidelines C and B; considered the nature of the Iranian government, its human rights record, its involvement in international terrorism, and its efforts to foster instability in neighboring countries; considered the totality of Applicant’s family ties as well as each family tie; and evaluated all the evidence in the context of the whole person. I conclude Applicant has mitigated the security concerns based on foreign preference, but she has not mitigated the concern based on foreign influence. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her a security clearance.

### **FORMAL FINDINGS**

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

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



Subparagraph 2.b:  
Subparagraph 2.c:  
Subparagraph 2.d:  
Subparagraph 2.e:

For Applicant  
For Applicant  
Against Applicant  
For Applicant

## **DECISION**

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

LeRoy F. Foreman  
Administrative Judge