



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 07-11206 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: Pro Se

May 19, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on July 10, 2006. On January 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On January 30, 2008, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on February 25, 2008. The case was assigned to another Administrative Judge on February 27, 2008. The case was transferred to me on March 13, 2008. On March 14, 2008, a Notice of Hearing was issued scheduling the hearing for April 3, 2008. The hearing was held as scheduled. The Government offered Government Exhibits (Gov) 1 - 2, which were admitted without objection. The Government requested that

administrative notice be taken of one document with 11 attachments. The document was marked as Administrative Notice Document 1 (Admin Not 1) without objection. Applicant testified and submitted six exhibits which were admitted as Applicant Exhibit (AE) A – F without objection. DOHA received the transcript of hearing on April 11, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Administrative Notice

Iran is a theocratic Islamic republic. The United States has not had diplomatic relations with Iran since April 7, 1980. The U.S. Department of State has set forth concerns of the United States with Iran's policies as: (1) Iran's efforts to acquire nuclear weapons and other weapons of mass destruction; (2) Iran's support for and involvement in international terrorism; (3) Iran's support for violent opposition to the Middle East peace process; and (4) Iran's dismal human rights record. (Admin Not 1, Doc 1 at 9) The United States has designated Iran as a state sponsor of terrorism. (Admin Not 1, Doc 6 at 2.) The government of Iran's human rights abuses against the Iranian people include summary executions, lack of fair public trials, disappearances, torture, arbitrary arrest and detention, political prisoners and detainees, severe restrictions on freedom of religion, discrimination against women, and severe restrictions on civil liberties including speech, press, assembly, association, movement and privacy. (Admin Not 1, Doc 5 at 1; Doc 4 at 8.)

The U.S. State Department continues to warn U.S. citizens and U.S.–Iranian dual citizens to consider carefully the risks of travel to Iran. Some elements of the Iranian regime remain hostile to the U.S. and U.S. citizens. U.S.-Iranian dual citizens may be subject to harassment or arrest while residing in Iran. (Admin Not 1, Doc 3.) Iranian born, naturalized U.S. citizens, and the children of such persons, are considered solely Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. In the past, U.S.–Iranian dual nationals have been denied permission to enter/depart Iran using their U.S. passport; they even had their U.S. passports confiscated upon arrival or departure. (Admin Not 1, Doc 2 at 1.)

Findings of Fact

In her Answer to the SOR, dated January 30, 2008, Applicant admitted to all the SOR allegations with noted objections.

Applicant is a 31-year-old senior security consultant employed with a Department of Defense contractor. She has worked for her current employer since January 2005. She has a Master's Degree in information technology. She is single. This is her first time applying for a security clearance. (Tr at 4-5, 42; Gov 1.)

Applicant was born in the United States. Her father, a citizen of Iran, and a member of the Iranian military attended military training for several years at a U.S. base. After he completed training, the family moved back to Iran. Applicant spent her formative years in Iran. She was educated in Iran. In 1999, she received her undergraduate degree from an Iranian university. Applicant always wanted to move to the U.S. She decided to leave Iran after graduating. She traveled to Germany in 1999. Based on the advice received from the Swiss Embassy, she traveled to Germany on her Iranian passport. She received her U.S. passport and social security card from the U.S. Embassy in Germany. She stayed in Germany for a few months visiting with her sister and two of her aunts, all of whom reside in Germany. She also visited an aunt who resides in the United Kingdom. (Tr at 14-16.)

In December 2000, Applicant moved to the U.S. She found a job two weeks after arriving in the United States. She worked full-time and went to graduate school on a part-time basis. She purchased a condominium in 2001. She received her Master's Degree in December 2004. (Tr at 59-60; Gov 1; AE E.)

As a U.S. citizen, Applicant sponsored her parents and sister to come to the U.S. Her parents moved to the U.S. in 2001. They reside with Applicant when they are in the U.S. Her mother is a U.S. permanent resident. Her father became a U.S. citizen in March 2007. (Tr at 61-63.) Her father retired from Iranian military in 1993 at the rank of General. He currently works for a car dealership in the U.S. Her mother is a retired high school psychology teacher. (Tr at 55-58, 62; Gov 2, question 4.) Her sister is an Iranian citizen who currently works and resides in Germany. She is applying for German citizenship. (Tr at 78; Gov 2, questions 10, 31.)

Applicant's grandparents are citizens of and reside in Iran. She talks to her grandparents about once a month. (Tr at 21; Answer to SOR; Gov 2, question 10.) She traveled to Iran in 2003, 2004, and 2006 to visit her grandparents. Her visits lasted approximately 10 days. Her mother is currently residing in Iran. She lives part of the year in the U.S. and the other part of the year in Iran. She travels to Iran in order to care for her parents (Applicant's grandparents.) who are elderly and have health issues. When her mother is living in Iran, Applicant talks to her once a week. Applicant's father occasionally travels to Iran as well. (Tr at 20, 64; Gov 2, questions 10, 31.)

Applicant has two maternal uncles who live in Iran. One uncle is an accountant. One uncle is retired. He is a permanent resident of the U.S. and lives part of the year in Iran and part of the year in the U.S. She has two paternal uncles who live in Iran. One is very old. Applicant thinks that he is an artist. The other uncle is a civil engineer. He is applying for Canadian citizenship and will be moving to Canada soon. (Tr at 65-71; Gov 2, question 10.) Her contact with her uncles is limited. She talks with them about once or twice a year. She visited with them when she traveled to Iran to visit her grandparents. She has a maternal aunt and a paternal aunt who live in Germany and a maternal aunt who lives in the United Kingdom. (Tr at 68-70, 73; Gov 2 at 10.)

Applicant has an Iranian passport which was issued on June 28, 1997. The passport expired on June 28, 2002. Applicant renewed the passport on December 8, 2003, and it expired on June 28, 2007. (Gov 2, copy Iranian passport.) Applicant used her Iranian passport when she visited her grandparents in Iran in 2003, 2004 and 2006. She used her Iranian passport based on the advice of the U.S. State Department for safety reasons. (Tr at 60; Gov 2, questions 1-5; Admin Not I, attachments 2, 3.) In the future, she would like to be able to visit her grandparents in the event of an emergency or to attend their funerals. (Tr at 20.)

Applicant gave her expired Iranian passport to her Facility Security Officer (FSO). Her passport was placed in her personnel security file. She was advised by the FSO that if she requested her passport back, it would be reported to the federal government. The FSO states that the company supports Applicant in her request for a security clearance. (Tr at 35-36; AE F.) Applicant testified that it is likely that she will have to renew her Iranian passport in order to travel to Iran should something happen to her grandparents. (Tr at 75-76.)

Applicant's second level manager testified on her behalf. Applicant has worked for him for two and half years. He interacts with her periodically, probably on a monthly basis. On past special projects, he worked with her on a daily basis. He states that Applicant is a top performer within the organization. She is being groomed for more responsible positions within the organization. She receives the highest level of performance rating within her peer group. She was promoted last year and will be up for promotion this year. (Tr at 40-45; AE D.)

Applicant's co-worker, who also is a reservist, testified on her behalf. He has worked with her on a daily basis for the past two years. He describes her work performance as excellent. He holds a high opinion of her trustworthiness. (Tr at 47-50.) Applicant has received numerous favorable comments about her work performance from customers, co-workers and superiors. (AE A – C.)

Applicant will not share confidential information. She does not agree with the policies of the Iranian government. She owns a condominium in the U.S. and all of her assets are here in the U.S. While growing up in Iran, she always wanted to live in the U.S. She is glad she finally got the opportunity to be here. She would not be where she is today without the freedom that U.S. gave her to use. She is a loyal U.S. citizen. (Tr at 27-28.)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to 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 the 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

The security concern relating to the guideline for Foreign Preference is set out in AG ¶9:

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.

The guideline notes several Foreign Preference Disqualifying Conditions (FP DC) that could raise security concerns. The following apply to Applicant's case:

FP DC ¶10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport*);

FP DC ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen.*)

Applicant was born in the U.S., of Iranian parents. Her family moved back to Iran when she was a very young child. Having grown up in Iran, it is apparent that Applicant exercised dual citizenship. After moving to the U.S., she exercised dual citizenship by applying for an extension of her Iranian passport in 2003 and using her Iranian passport to travel to and from Iran. It is noted that Applicant traveled with the Iranian passport for safety reasons and based on the advice of the U.S. State Department.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Preference. Foreign Preference Mitigating Condition (FP MC) ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) applies. Applicant's passport expired on June 28, 2007. She surrendered her expired passport to her FSO, the cognizant security authority. While Applicant may intend to renew her Iranian passport in the future should an emergency happen related to her grandparents, at present, she does not possess a valid Iranian passport.

Applicant has mitigated the Foreign Preference security concerns. Guideline C is found for Applicant.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶6:

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.

The guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following apply to Applicant's case.

Foreign Influence Disqualifying Condition (FI DC) ¶ 7(c) (*contact with a 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 FI DC ¶ 7(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*) applies as a result of Applicant's relatives who are citizens of and reside in Iran. There is a security risk because Applicant's maternal grandparents and mother currently reside in Iran. Applicant's mother is currently living in Iran taking care of Applicant's grandparents. It is clear that Applicant is close to her mother. Her mother lives with Applicant when she resides in the U.S. Applicant talks to her mother once a week when she is living in Iran. She calls her maternal grandparents once a month. She visited them in March 2006, December 2004, and August 2003. She intends to travel to Iran in the future should an emergency arise involving one of her grandparents. She intends to travel to Iran to attend their funerals.

Applicant also has four uncles who are citizens of and reside in Iran. Although she only speaks with them once or twice a year, they raise a security concern based on Applicant's family contacts. Her father occasionally travels to Iran as well. Applicant's foreign relatives create a heightened risk of foreign pressure or attempted exploitation because there is a possibility that Iranian agents may exploit the opportunity to obtain intelligence, classified, or economic information about the U.S. A potential conflict is created between Applicant's obligation to protect sensitive information or technology and her desire to help her family members, in particular, her mother and grandparents.

Foreign Influence Disqualifying Condition (FI DC) ¶ 7(d) (*sharing living quarter with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*) applies with respect to Applicant's parents. Her parents live with Applicant when they are in the U.S. Her mother is a permanent U.S. resident but resides a large part of the year in Iran. Her father is a dual citizen of the U.S. and Iran. Although he retired from the Iranian military in 1993, his status as a general officer has the potential to create a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence. Several Foreign Influence Mitigating Conditions (FI MC) have the potential to apply.

FIMC ¶ 8(a) (*the nature of the relationship with foreign persons, the country in which these persons are located, or the position 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.*) does not apply. Family contacts and ties with persons in a foreign country are not automatically disqualifying but require the applicant to present evidence in mitigation and extenuation that he or she qualifies for a security clearance. Iran's hostile relationship with the United States and the country's poor human rights record place "a heavy burden of persuasion on applicant to show his or her family members do not pose a security risk." (See, ISCR Case No. 04-11463 at 3 (App.Bd. Aug. 4, 2006.)) Applicant has not met that burden. She has close ties to her grandparents. She acknowledges that she will likely renew her Iranian passport should anything happen to them. Her mother is currently in Iran taking care of Applicant's grandparents. Although her father is a U.S. citizen, he is a retired general officer of the Iranian military. While he has been retired since 1993, his status has the potential to raise the level of scrutiny by the Iranian government. Applicant's family ties in Iran are significant enough to raise foreign influence concerns. The risk is heightened due to the nature of the Iranian government.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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*) does not apply. While Applicant may not have a sense of loyalty or obligation to the Iranian government, she does have a sense of obligation to her family members who reside in Iran that cannot be described as minimal. She contacts her grandparents once a month. She contacts her mother once a week during the time she lives in Iran. Her mother lives with Applicant when she lives in the U.S. While Applicant has less contact with her uncles who live and reside in Iran, she did visit with them when she traveled to Iran to visit her grandparents and speaks with them once or twice a year, usually during the holidays. While Applicant has lived in the U.S. since 1999, her significant ties to relatives living in Iran raise questions as to whether she can resolve any conflict of interest in favor of U.S. interests.

FI MC ¶ 8(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*) is not applicable. Applicant's relationship with her mother and grandparents cannot be considered casual and infrequent. Although she has limited contact with her uncles, speaking to them only once or twice a year, her contact with her uncles cannot be described as casual or infrequent.

Applicant has not met her burden to mitigate the security concerns raised under Foreign Influence.

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 the 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) 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is highly thought of by her superiors and co-workers. She is considered a top performer by her company and is being groomed for advancement. There is no doubt that Applicant has a successful career ahead of her. However, Applicant's outstanding work performance does not reduce the very significant security threat raised by Applicant's family members in Iran. The government need not prove an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. An applicant with good character and personal integrity can pose a security risk because the applicant has close relatives in a country that is hostile to the U.S. (ISCR No. 01-26893, at 9-10 (App. Bd. Oct. 16, 2002.)

Guideline B is a security concern that can affect Applicants through no fault of their own. In fact, under Guideline B, an Applicant's familial obligations, which are highly regarded in other situations, raise security concerns when family members reside in another country. The current nature of the Iranian government and the hostile relationship between Iran and the U.S. make it a substantial burden to mitigate the concerns raised under foreign influence. Applicant's favorable work performance and contacts within the U.S. do not outweigh the concerns raised by having relatives who are citizens of and reside in Iran. Foreign Influence security concerns are not mitigated.

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:

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

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge