



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



In the matter of:)	
)	
XXXX, Xxxxxx XXX)	ISCR Case No. 07-13175
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

September 30, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 15 April 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B.¹ Applicant answered the SOR 24 May 2008, and requested a hearing. DOHA assigned the case to me 26 June 2008, and I convened a hearing 31 July 2008. DOHA received the transcript (Tr.) 8 August 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the allegations of the SOR, except for SOR 1.b. She is a 28-year-old system engineer assistant employed by a defense contractor since December 2005. She has not previously held a clearance.

Applicant was born in Iran in June 1980. In 1998, when she was 18 years old, she immigrated to the U.S. with her parents to have a better life. She became a naturalized U.S. citizen in February 2005, and obtained her U.S. passport in March 2005. Her mother became a naturalized U.S. citizen in April 2006. Her father is the final stages of obtaining his U.S. citizenship. Applicant's older sister, a housewife, has been approved for her visa to immigrate to the U.S., and expects to arrive in the U.S. in December 2008 or January 2009. Applicant has regular contact with her sister. Applicant's maternal grandparents, retired rug merchants, are dual citizens of the U.S. and Iran, who currently reside six months in Iran and six months in the U.S. every year. When they are in the U.S., they live with Applicant's uncle in another state. They are planning to move permanently to either the U.S. or Germany in the near future.

When Applicant immigrated to the U.S., she began taking computer science courses through an on-line university in Iran. She studied on-line from September 1998 through March 2001, obtaining her undergraduate degree. She attended graduate school in the U.S. from January 2003 to July 2005, obtaining her master's degree in reliability engineering. Applicant has real estate holdings and other assets in the U.S. valued at \$800,000. She has no financial interests in Iran, and no family members in Iran other than mentioned above. Applicant is unmarried and has no children, but she is the sole support for her parents who live with her.

Applicant immigrated to the U.S. on an Iranian passport, and renewed it, as required by U.S. immigration law, in December 2004. Her current Iranian passport does not expire until December 2009. Initially, she expressed an intent to retain her Iranian passport (G.E. 2), but in her answer stated a willingness to surrender it. At hearing, she revealed that she has begun the process of surrendering her Iranian passport to Iranian authorities, a process that requires her to be interviewed by Iranian authorities in the U.S.

Since immigrating to the U.S. in 1998, Applicant has returned to Iran about annually, mostly to visit her sister. Two extended trips in spring 2000 and spring 2001 were necessary to sort out issues with her on-line credits at her on-line university. All these trips except the August 2006 trip, occurred before she obtained U.S. citizenship. She used her Iranian passport to enter and exit Iran each time, including 2006. She understands the potential consequences to her if she retains or renews her Iranian passport.

Iran is a fundamentalist Islamic republic with a poor human rights record. Its relations with the U.S. are confrontational and unlikely to improve given Iran's efforts to acquire nuclear weapons, its sponsorship of, support for, and involvement in,

international terrorism, and its support for violent opposition to the Middle East peace process. Nevertheless, Iran is not a known collector of U.S. intelligence or sensitive economic information, nor is it known to target U.S. citizens to obtain protected information.

Travel to Iran remains problematic. The Department of State's May 2007 Travel Warning continues to warn U.S. citizens to carefully consider the risks of travel to Iran, noting that dual national Iranian-American citizens may encounter difficulty in departing Iran. Some elements of the Iranian government and population remain hostile to the U.S. Consequently, American citizens may be subject to harassment or arrest while traveling or residing in Iran. Americans of Iranian origin are urged to consider the risk of being targeted by authorities before planning travel to Iran. In addition, Iranian authorities may deny dual nationals access to the U.S. Interests Section in Tehran, because they are considered to be solely Iranian citizens. Large-scale demonstrations have taken place in various regions throughout Iran over the past several years as a result of a sometimes volatile political climate. U.S. citizens who travel to Iran despite the travel warning are urged to exercise caution.

The U.S. government does not currently have diplomatic or consular relations with the Islamic Republic of Iran, and, therefore, cannot provide protection or routine consular services to American citizens in Iran. The Swiss government, acting through its Embassy in Tehran, serves as protecting power for U.S. interests in Iran. Neither U.S. passports nor visas to the United States are issued in Tehran. The Iranian government does not recognize dual citizenship and generally does not permit the Swiss to provide protective services for U.S. citizens who are also Iranian nationals. In addition, U.S. citizens of Iranian origin who are considered by Iran to be Iranian citizens have been detained and harassed by Iranian authorities.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline B (Foreign Influence) and Guideline C (Foreign Preference).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access

to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.²

Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.³ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.⁴ Security concerns may also be raised if there are 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.⁵

Applicant has frequent and close contact with her sister who is a resident citizen of Iran. However, her sister has been approved for her visa to immigrate to the U.S. as a legal permanent resident, and she intends to immigrate to the U.S. as soon as she obtains her visa. Applicant is similarly close to her grandparents, who are citizens of the U.S. who intend to leave Iran permanently soon. However, none of them are connected

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³Revised Adjudicative Guidelines, ¶ 6.

⁴Revised Adjudicative Guidelines, ¶ 7.(a).

⁵Revised Adjudicative Guidelines, ¶ 7.(b).

in any way to the Iranian government. In addition, while Applicant has traveled to Iran frequently in past years, she now understands the potential consequences for her clearance if she resumes travel to Iran. Under Guideline B, the mere existence of a foreign family member is not sufficient. The nature of Applicant's contact with the family member must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk over some normally existing risk that can be said to be inherent anytime a family member lives subject to a foreign government. One factor that heightens the risk in Applicant's case is the nature of the Iranian government and its hostility towards the United States.

In assessing Applicant's potential for foreign influence, I have considered 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 interest of the U.S.⁶ I have also considered whether 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.⁷

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not "in a position to be exploited." Thus, an administrative judge could not apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the U.S. interest.

The nature of the government of Iran, its disregard for human rights, and its pursuit of nuclear weapons place a heavy burden on Applicant in mitigating the disqualifying conditions and the security concerns. Countering that somewhat is the fact that Iran is not a known collector of U.S. information. Applicant has close relationships with her parents and brother. However, given their lack of connection to the Iranian government, it is highly unlikely that there could be a circumstance where Applicant is placed in a position of having to choose between the interests of her family and the government of Iran or interests of the United States because of the nature of the Iranian government.

Applicant's sense of loyalty is demonstrably to the U.S. She has little if any sense of loyalty to Iran. She left Iran for a better life 10 years ago, and has established her roots in the U.S. She completed her education here and purchased property here. Her

⁶Revised Adjudicative Guidelines, ¶ 8.(a).

⁷Revised Adjudicative Guidelines, ¶ 8.(b).

sense of loyalty or obligation is not to Iran but to the United States. A conflict of interest in this case is extremely unlikely. In balancing all of the factors mentioned and considered above, I am satisfied Applicant's loyalty to the United States is such that she can be expected to resolve any conflict of interest in favor of the United States. Accordingly, Applicant has met her heavy burden to show that her contacts with her family in Iran do not cause a security concern. I conclude Applicant has mitigated security concerns rising from her contact with her family in Iran. I resolve Guideline B for Applicant.

The government also established a case for disqualification under Guideline C by showing that Applicant retained her Iranian passport after becoming a U.S. citizen in February 2005 and obtaining her U.S. passport the following month. She used her Iranian passport—albeit without any knowledge of the security significance—to enter and exit Iran in August 2006.⁸

Applicant has mitigated the Guideline C security concerns. Although she has been a dual citizen of Iran and the United States since her naturalization as a U.S. citizen, her Iranian citizenship would have little security significance if based solely on her parents' citizenship. For her conduct to fall within the security concerns of Guideline C, she must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C. The government has a compelling interest in ensuring those entrusted with this nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen.

Strictly speaking, Applicant does not fully meet the mitigating conditions (MC) for foreign preference. Her dual citizenship is largely based solely on her parents' citizenship, but is based partly on her active exercise of dual citizenship after being born a U.S. citizen, however unwitting it may have been.⁹ She has not expressed a willingness to renounce her foreign citizenship, although she has expressed, and acted upon, a willingness to surrender her passport.¹⁰ All exercise of dual citizenship occurred after she obtained U.S. citizenship, while she was an adult.¹¹ Applicant's use of her Iranian passport has not been formally sanctioned by the U.S., although State Department guidance generally warns dual Iran/U.S. citizens to take precautionary

⁸Revised Adjudicative Guidelines, ¶ 10.(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 included but is not limited to: (1) possession of a current foreign passport;

⁹Revised Adjudicative Guidelines, ¶ 11.(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

¹⁰¶ 11.(b) the individual has expressed a willingness to renounce dual citizenship;

¹¹¶ 11. (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;

measures with their Iranian passport, implicitly approving their use.¹² She has taken steps to surrender her passport, with the resultant inability to travel to Iran.¹³ On balance Applicant has demonstrated that she can be counted on to always act in preference to the United States. Indeed, a common sense reading of the record reveals multiple reasons to review her attachments to the U.S. as stronger than her attachments to Iran. All her financial and personal interests are, or soon will be, in the U.S. I resolve Guideline C against Applicant.

Formal Findings

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a: For Applicant
Subparagraph b: For Applicant
Subparagraph c: For Applicant
Subparagraph d: For Applicant
Subparagraph e: For Applicant

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph a: For Applicant
Subparagraph b: For Applicant
Subparagraph c: For Applicant

Conclusion

In light of all 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 Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge

¹²¶ 11.(d) use of a foreign passport is approved by the cognizant security authority;

¹³¶ 11.(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;