



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



In the matter of:)
)
) ISCR Case No. 07-14461
)
) SSN:)
)
)
) Applicant for Security Clearance)

Appearances

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

June 30, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 13 March 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B and C.¹ Applicant answered the SOR 15 April 2008, and requested a hearing. DOHA assigned the case to me 9 May 2008, and I convened a hearing 5 June 2008. DOHA received the transcript (Tr.) 16 June 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., 1.e., and 1.f., and 2.a. She is a 29-year-old consultant employed by a defense contractor since April 2007. She has not previously held a clearance.

Applicant was born in the U.S. in June 1978, to Iranian nationals residing in the U.S. while her father attended school. She obtained U.S. citizenship by birth and derived Iranian citizenship through her parents. When she was a year old, she returned to Iran with her parents, and resided continuously there until December 2000.

Applicant was raised and educated in Iran. Her parents opposed the Islamic fundamentalist government that took power when the Shah was overthrown in January 1979, and were imprisoned when Applicant was five years old for that opposition. Her father died in prison two years later, and her mother was imprisoned for six years before being released. During these six years, Applicant lived with her grandmother, with whom she is understandably close. When Applicant lived in Iran, she voted in one election. The record evidence is contradictory, but Applicant voted absentee in an Iranian election at least once, possibly twice.

Applicant graduated from college in Iran in June 2000. She attended college on a government-funded scholarship awarded when she passed an entrance examination. In June 2000, she made her pilgrimage to Mecca (Haj), Saudi Arabia, traveling on a special Haj passport issued by the Iranian government that only permitted her to travel from Iran to Saudi Arabia and return.

In September 2000, Applicant obtained her first U.S. passport, in anticipation of traveling to the U.S. to continue her education.² Because Iran does not recognize her U.S. citizenship, Applicant obtained her Iranian passport—required for her to leave Iran—in November 2000. In January 2006, she had its validity extended to November 2010 (G.E. 4). She used her Iranian passport to travel to Iran in December 2004 and December 2006, because she is unable to enter or exit Iran on her U.S. passport.

Applicant came to the U.S. in December 2000. In November 2000, she married her fiancé, an Iranian national, after moving up the wedding date because they concluded it would be easier to get him a spouse visa to immigrate to the U.S. than to get a fiancé visa. Applicant's spouse immigrated to the U.S. as a legal permanent resident in April 2003. Although not legally separated, they began living separately in October 2006 (G.E. 1), and were subsequently divorced in January 2008 (A.E. A), after he became a naturalized U.S. citizen. Applicant began living with her current boyfriend (also an Iranian national) in June 2006; they are now engaged.

Applicant's mother immigrated to the U.S. in October 2005, lives with Applicant, and is a legal permanent resident (LPR) of the U.S. eligible to apply for her U.S.

²Applicant eventually obtained a graduate degree in May 2004.

citizenship next year. She intends to do so. However, she has returned to Iran since immigrating to the U.S. to visit her mother and other daughter. Applicant's sister is a resident citizen of Iran, employed as a contact accountant for the government-owned petroleum company (G.E. 4, A.E. B). Applicant speaks to her by telephone every two weeks, and visits her when she travels to Iran. Applicant's grandmother is also a resident citizen of Iran. Applicant speaks to her by telephone every two months, and visits her when she travels to Iran. Applicant expects to travel to Iran in the future to visit her sister and grandmother.

In her August 2007 subject interview (G.E. 2), Applicant expressed an unwillingness to renounce her Iranian citizenship (which she acknowledge having acquired by birth) or to destroy her Iranian passport. She is unwilling to renounce her Iranian citizenship because Iran law would not allow her to travel to Iran in the future, and she wants to be able to visit her sister and grandmother in Iran. In her January 2008 response to DOHA interrogatories (G.E. 3), Applicant restated her unwillingness to surrender her Iranian passport because it would curtail her ability to travel to Iran.

Except as noted above, Applicant has no ties to Iran even though she lived most of her life there. Her financial interests are all in the U.S. However, the record contains no information about her work performance and reliability, or evidence of her connections to the U.S. aside from her residing here since December 2000.

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.³

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

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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.⁴ 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.⁵

In this case, the government failed to establish a case for disqualification under Guideline B as regards her mother, her current fiancé, her sister’s employment, or her ex-husband and in-laws. Considering first the foreign country involved, Iran and the U.S. enjoy strained foreign relations at best. However, Iran is not a known collector of U.S. intelligence or sensitive economic information, or known to target U.S. citizens to obtain protected information. Her divorce largely renders moot the security concerns raised by her ex-husband and former in-laws, as those relationships do not appear to have been particularly close.⁶ Security concerns regarding her mother are mitigated by mother’s LPR status in the U.S. and her prospective U.S. citizenship. Similarly, her current fiancé’s LPR status in the U.S. vitiates the potential security concerns raised by their cohabitation. The security concerns regarding her sister are attenuated because the sister works for a contractor, not directly for the Iranian government. On balance, the government’s evidence failed to establish that there was any risk, much less a heightened risk, of foreign exploitation, inducement, manipulation, pressure, or coercion because of these family contacts inside or outside Iran.

Nevertheless, the government established a case for disqualification under Guideline B because of her close and continuing contacts with her sister and her grandmother as evidenced by her regular telephone contact, her travel to Iran in December 2004 and December 2006, and her stated intent to travel to Iran in the future.⁷ Ordinarily, travel to a foreign country—even a country of origin—has no independent security significance, but only serves to demonstrate an Applicant’s ties of affection to family members residing there. However, in this case Applicant travels to Iran, and subjects herself to the jurisdiction of a government that is not only hostile to the U.S., but considers her to be only an Iranian citizen and thus likely to be denied access to what little assistance is available to U.S. citizens through the U.S. Interests Section in Tehran. Even though Iran is not an active collector of sensitive U.S.

⁴Revised Adjudicative Guidelines, ¶ 6.

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

⁶The chronology of Applicant’s marriage, her husband’s subsequent immigration to the U.S. and naturalization as a U.S. citizen, and their later separation and divorce suggests that his immigration requirements were as important a consideration for their relationship as any mutual emotional commitment.

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

information, an applicant in Applicant's circumstances who travels to Iran presents a potential target of opportunity that presents an unacceptable risk of being coerced to provide information. I resolve Guideline B against Applicant.

The government also established a case for disqualification under Guideline C by showing that Applicant obtained an Iranian passport in November 2000, had it extended in January 2006, used it to travel to Iran in December 2004 and December 2006, and intends to use it to travel to Iran in the future, despite being a U.S. citizen since birth. In addition, she also accepted educational benefits from Iran that were only available to her as an Iranian citizen and voted in Iranian elections.⁸

Applicant has not mitigated the Guideline C security concerns. Although she has been a dual citizen of Iran and the United States since her birth, 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.

Applicant meets none of the mitigating conditions (MC) for foreign preference. Her dual citizenship is not based solely on her parents' citizenship, but is based on her active exercise of dual citizenship after being born a U.S. citizen.⁹ She has not expressed a willingness to renounce her foreign citizenship.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 sanctioned by the U.S.¹² She is not willing to invalidate her passport or refrain from traveling to Iran.¹³ While Applicant has a legal right to maintain her dual citizenship with its attendant benefits and responsibilities,

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; . . . (3) ((3) accepting educational . . . or other such benefits from a foreign country; . . . (7) voting in a foreign election; b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

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. © 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;

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;

she has not 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 no compelling reason to review her attachments to the U.S. as stronger than her attachments to Iran. I resolve Guideline C against Applicant.

Formal Findings

Paragraph 1. Guideline B: AGAINST APPLICANT

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

Paragraph 2. Guideline C: AGAINST APPLICANT

Subparagraph a: Against Applicant
Subparagraph b: Against Applicant
Subparagraph c: Against Applicant
Subparagraph d: Against Applicant

Conclusion

In light of all the circumstances 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 denied.

JOHN GRATTAN METZ, JR
Administrative Judge