



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 07-14435 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

July 24, 2008

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the foreign influence concerns which arise from her close family ties to her parents and sister who are citizens and residents of Iran.

On March 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges security concerns under Guidelines B (foreign influence) and C (foreign preference). Applicant submitted a response to the SOR that was received by DOHA on March 31, 2008. Applicant admitted all SOR allegations and requested a hearing.

The case was assigned to me on April 23, 2008. A notice of hearing was issued on April 24, 2008, scheduling the hearing for May 20, 2008. The hearing was conducted as scheduled.

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The government submitted 15 documentary exhibits that were marked as Government Exhibits (GE) 1-15. GE 1-4 were admitted into the record without objection. Administrative notice was taken of the contents of GE 5-15 without objection. Department Counsel submitted a document containing written comments on the contents of GE 5-15 for my consideration which was marked as Appellate Exhibit (App. Ex.) I, and made part of the record without objection. Applicant testified and submitted two documentary exhibits that were marked as Applicant Exhibits (AE) 1 and 2, and admitted into the record without objection. The transcript was received on June 2, 2008.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 30-year-old married woman who has been employed as a software engineer by a defense contractor since 2005. She was awarded a bachelor of science degree in 2005, after working for the same defense contractor as an intern while attending college. She is considered to be a responsible person, a valued employee and a team player. She held a variety of jobs outside the defense industry between the time she immigrated to the U.S. in 1999 and when she began working for her current employer. She has never possessed a security clearance.

Applicant was born and raised in Iran. She attended college in Iran from October 1996 to April 1999. Her husband was born in the U.S. and is a U.S. citizen. His parents were citizens of Iran but attending school in the U.S. when he was born. He returned with his parents to Iran when he was about seven years old and resided there until he was about 20 years old. Applicant met her husband in Iran. He then returned to the U.S. to apply for an fiancée visa for her. She then immigrated to the U.S. in 1999 and they were married in August 1999. They do not have any children, but Applicant is expecting a child later this year. Her husband's parents are now U.S. residents.

Applicant's mother, father and her sole sibling, a sister, are citizens and residents of Iran. Her parents have visited with her in the U.S., most recently in December 2007. Applicant became a naturalized U.S. citizen in January 2005, obtained a U.S. passport in March 2005, and applied for her parents to become permanent resident aliens very shortly thereafter. Her parents have now acquired permanent resident alien status and intend to immigrate to the U.S. within the next two years after they complete selling property in Iran and otherwise winding up their personal affairs. Applicant would like to sponsor her sister's entry into the U.S. but has been told that procedure would take about 15 years.

Applicant's mother is 51 years old and her father is 60 years old. Her father works for a food importing and exporting company in Iran. Her mother is a homemaker. Applicant's sister is 27 years old, engaged to an Iranian citizen and resident, and currently resides with her parents. Applicant's sister and her fiancé will most likely be married in Iran and want to emigrate from there as soon as they can following their marriage. Applicant speaks with her parents and sister by telephone twice a week or more.

Applicant visited her family in Iran for two months in 2001, for one month in 2003, for one month in 2005, and for two weeks in 2006. Her husband only accompanied her on the trip in 2005. She possessed an Iranian passport and used that passport for the 2001 and 2003 trips. She used both passports for the trips in 2005 and 2006. She intends to travel to Iran in the future to attend her sister's wedding. She also will travel to Iran if it becomes necessary for a reason such as the 2006 trip which was necessitated because her father suffered a heart attack. She does not intend to renew her Iranian passport until it becomes necessary to visit her family in Iran.

Neither Applicant nor her husband own any property in Iran. They have purchased a house in the U.S. that is valued at approximately \$400,000. They made a \$25,000 down payment on this house which was obtained from the proceeds of the sale of a prior house they owned. Applicant has about \$5-6,000 invested in a 401K retirement plan and an additional couple of thousand dollars in a savings account. Her annual income is about \$50,000.

Iran has been identified by the U.S. to be the most active state sponsor of terrorism. (GE 10)

The U.S. Government defines (Iran's) areas of objectionable behavior as the following:

- Iran's efforts to acquire nuclear weapons and other weapons of mass destruction;
- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process, as well as its harmful activities particularly in Lebanon, as well as in Iraq, Afghanistan, and elsewhere in the region; and
- Its dismal human rights record and lack of respect for its own people. (GE 5)

The Department of State continues to warn U.S. citizens to carefully consider the risks of travel to Iran. Dual national Iranian-American citizens may encounter difficulty in departing Iran. . . .

Some elements of the Iranian regime and the population remain hostile to the United States. As a result, American citizens may be subject to harassment or arrest while traveling or residing in Iran. Recently (as of January 3, 2008) Iranian authorities prevented a number of Iranian-American citizen academics, journalists, and others who traveled to Iran for personal reasons from leaving for several months, and in some cases detained and imprisoned them on various charges, including espionage and posing a threat to national security. Americans of Iranian origin should consider the risk of being targeted by authorities before planning travel to Iran. Iranian authorities may deny dual nationals access to the United States Interests

Section in Tehran, because they are considered to be solely Iranian citizens.
. . . (GE 7)

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guidelines B (foreign influence) and C (foreign preference), with their disqualifying and mitigating conditions, are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

⁹ *Egan*, 484 U.S. at 528, 531.

denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

Analysis

Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or 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.

Applicant’s parents and sister are citizens and residents of Iran. She maintains very close ties with each of those individuals as evidenced by her frequent telephone contact with them, her parents’ recent visit to the U.S., her frequent and lengthy trips to Iran to visit with them, her sponsoring of her parents in their acquisition of permanent U.S. resident alien status, her expressed desire to do the same for her sister, and her emphatic assertion that she will return to Iran to attend her sister’s wedding. While each of these actions is understandable and even commendable, individually and collectively they raise security concerns under Disqualifying Condition (DC) 7(a): *contact with a foreign family member . . . or other person who is a citizen of or resident in a foreign country it that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.*

I have considered all mitigating conditions and find that none apply. Specifically, Mitigating Condition (MC) 8(a): *the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.* does not apply because of the obvious close relationship between Applicant and her parents and sister and the nature and history of the Iranian Government.

Likewise, MC 8(b): *there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person . . . 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.* does not apply because of the obviously very strong feelings of attachment that Applicant has for her parents and sister, the comparatively short time she has been a U.S. citizen and employed by defense contractor, her expressed intent to return to Iran for her sister’s wedding and any other

¹⁰ *Id* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

family matters that might arise, and the nature of the Iranian Government and its relationship with the U. S.

Applicant's frequent contact with her family members in Iran, her repeated travel to that country and her parents travel to the U.S. prohibit application of 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*. The remaining mitigating conditions have no applicability to the facts of this case.

Guideline C, Foreign Preference

Foreign preference is a concern because 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.

Applicant exercised her Iranian citizenship rights by using an Iranian passport to travel to Iran on four occasions between 2001 and 2006. The last display of the passport occurred after she became a U.S. citizen. While the passport has now expired and she has not renewed it, she has made very clear that she will renew and use it in the future to travel to Iran to attend her sister's wedding and for any unexpected future family matters that might arise. However, her use of the Iranian passport was mandated by Iranian law and not by any preference she had for Iran over the U.S. I have considered all potential disqualifying conditions and conclude none apply under the particular facts of this case.

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." In this case, there is no reason to doubt that Applicant is a loyal American citizen or suspect she would ever consider doing harm to the interests of the United States. Still, her continuing contacts with Iran as a result of her parents' and sisters' residency in that country, her expressed intent to travel to Iran in the future, and the nature of the Iranian Government and its relationship with the U.S. create a security concern that has not been overcome.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying conditions, Applicant has failed to mitigate the foreign influence security concern that exists in this case. She has failed to overcome the case against her in this regard or satisfy her ultimate burden of persuasion. Guideline B is decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

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:

Paragraph 1, Guideline B: AGAINST APPLICANT

Subparagraphs 1.a and 1.b: Against Applicant

Paragraph 2, Guideline C: FOR APPLICANT

Subparagraphs 2.a and 2.b: For 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 is denied.

Henry Lazzaro
Administrative Judge