



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



In the matter of:)
)
) ISCR Case No. 08-00600
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government:
Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

September 30, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 2 July 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 26 July 2008, and requested a hearing. DOHA assigned the case to me 12 August 2008, and I convened a hearing 19 September 2008. DOHA received the transcript (Tr.) 26 September 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. She is a 39-year-old undergraduate teaching assistant employed by a defense contractor since January 2005. She seeks to retain the interim clearance she held until the SOR was issued.

Applicant was born in the U.S. in February 1979, 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. In 1980 or 1981, she returned to Iran with her parents, and resided continuously there until April 1999.

Applicant was raised and educated in Iran. However, her goal was always to return to the U.S. to live. When she was four or five years old, she understood that she was a U.S. citizen and could move here as soon as she was able. She began studying English so her English could be as good as possible when that day arrived. She had hoped to persuade her parents to let her return to the U.S. to attend high school and college, but was unable to do so. She completed two years of college in Iran before she convinced them that she was old enough to live on her own in the U.S. When she returned to the U.S., she began taking computer courses at a local community college, ultimately obtaining her associate's degree in computer science. In February 2007, she obtained her undergraduate degree in computer science. She worked to fund her education.

When Applicant returned to the U.S., she exited Iran on the Iranian passport required for her to leave the country. She used that passport once to enter Iran—in June 2001—when she traveled to visit her parents. That passport expired in September 2003. Applicant shredded her Iranian passport in her personal shredder when she applied for her clearance. She keeps her U.S. passport current. She does not intend to return to Iran.

Applicant has been married for a year to a native-born U.S. citizen. They jointly own their home, valued at \$350,000. They plan to live in the U.S. and raise their family here. Applicant volunteers her time in the local community, and serves on the diversity council at work. She has a retirement account with her employer.

Although her parents are resident citizens of Iran, they are also legal permanent residents (LPR) of the U.S. They visit Applicant in the U.S. every year. They are saving to be able to move to the U.S. without having to rely on Applicant or public assistance for support. Her father is a civil engineer for a private company; her mother is a self-employed counselor for teenagers. Applicant's brother is also a resident citizen of Iran, whom Applicant has sponsored for his visa to immigrate to the U.S. He is a public relations manager for a private firm. None of Applicant's family members have any connection to the Iranian government. Applicant has no financial interests in Iran. She has disavowed any inheritance she might receive from her parents, so her brother will inherit their estate.

Applicant's coworkers and character references consider her honest and trustworthy. During the time she had an interim clearance, she demonstrated that she can handle classified information appropriately.

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 guideline is Guideline B (Foreign Influence).

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

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

³Revised Adjudicative Guidelines, ¶ 6.

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

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 parents who are resident citizens of Iran. However, they are also LPRs of the U.S., intending to immigrate to the U.S. as soon as they are financially able. Applicant is similarly close to her brother, who she has sponsored for his U.S. immigration visa. Nevertheless, none of them is connected in any way to the Iranian government. In addition, Applicant has not traveled to Iran in over seven years, and has no intent to do so in the future. She has shredded the expired Iranian passport that would otherwise be required to enter 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

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

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

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

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 was born in the U.S. and had a life-long goal of returning to her native land. She contemplated leaving Iran as a teenager, and left Iran as soon as she could convince her parents that she was old enough to manage being in the U.S. alone, before she finished college. She completed her education here, married and purchased a home here, established roots here. She is actively pursuing bringing her brother here. Her sense of loyalty or obligation is not to Iran but to the United States. In a telling moment in the hearing, Applicant acknowledged her understanding that "we don't have very good relations with them." 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.

Formal Findings

Paragraph 1. Guideline B: FOR APPLICANT

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