



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-04834
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esq., Department Counsel
For Applicant: *Pro se*

February 11, 2009

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines C (Foreign Preference) and B (Foreign Influence), based on Applicant's connections to Iran. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on May 12, 2005. On August 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guidelines C and B. 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant received the SOR on September 4, 2008; answered it on September 9, 2008; and requested a hearing before an administrative judge. DOHA received the request on September 12, 2008. Department Counsel was ready to proceed on September 29, 2008, and the case was assigned to me on November 25, 2008. DOHA issued a notice of hearing on November 28, 2008, scheduling the hearing for December 15, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified on her own behalf and presented the testimony of two witnesses. The record closed upon adjournment of the hearing on December 15, 2008. DOHA received the transcript (Tr.) on December 22, 2008.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Iran (Hearing Exhibit I). I took administrative notice as requested by Department Counsel, with no objection by Applicant. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In her answer to the SOR, Applicant denied the allegations in SOR ¶ 1.a and 1.e, and she admitted the remaining allegations in the SOR. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 51-year-old email and system administrator for a defense contractor. She has worked for her current employer since December 2002. She does not have a security clearance (Tr. 8).

Applicant was born in Iran and came to the U.S. in 1977 (Tr. 30). She completed high school in 1978, and attended college in the U.S., and she received a bachelor's degree in interior design in 1983. She also received a diploma from a computer training center in the U.S. in October 1992. She has worked continuously as a contractor for various federal agencies since March 1993.

Applicant became a U.S. citizen in May 1996. She was married in July 2002 to a native of Iran who has been a U.S. citizen for about 30 years.

Applicant obtained an Iranian passport in 1998, after becoming a U.S. citizen, and used it to visit her family in Iran. Her Iranian passport expired in March 2003, and she renewed it in November 2003, in order to visit her father in Iran after he suffered a heart attack (GX 3 at 21). She visited her family in Iran again in October 2006. She informed her employer and her security officer of her travel to Iran (Tr. 34).

Applicant's Iranian passport expired on March 5, 2008. In response to DOHA interrogatories on May 27, 2008, she declared her intention to renew her Iranian passport in order to visit her ailing father if necessary (GX 3 at 3). At the hearing, she

testified she did not renew her Iranian passport because she learned it would raise issues regarding her eligibility for a clearance (Tr. 40). She testified she would be willing to destroy or surrender her expired Iranian passport and to “denounce” her Iranian citizenship if it is possible (Tr. 34, 40, 43-44). She has no current plans to visit Iran (Tr. 61). In her closing statement, she referred to Iran as an evil country with an evil government (Tr. 60).

Applicant’s father, stepmother, one sister, and stepbrother are citizens and residents of Iran. Her father and stepmother are retired and have no relationship with the Iranian government. Her father is 88 years old and in poor health. Applicant testified she left Iran before her father remarried, and she has no relationship with her stepmother (Tr. 34). Her stepbrother is a student. He was born after Applicant left Iran, and she does not know him (Tr. 34). Her sister is a university graduate but is unemployed. She talks to her sister on a regular basis (GX 5 at 3). Her sister intends to come to the U.S. and was scheduled for an immigration interview in January 2009 (Tr. 35-36).

Applicant applied for a trustworthiness determination in December 1998. On her application, she disclosed her family members in Iran and her travel to Iran in April to May 1998 (GX 1).

Applicant also has a sister, two nephews, and a granddaughter who are citizens and residents of the U.S. She referred to her husband, sister, and two nephews as her “first family.” She referred to her two nephews as “my life” (Tr. 31). All her husband’s family members are in the U.S. (Tr. 41).

Applicant and her husband own two residential properties in the U.S. Their home is worth about \$1 million, and they also own a condominium worth about \$400,000 (Tr. 39). They own no property in Iran.

A former employer who is now a family friend testified for Applicant. While she did not hold a security clearance while working for the witness, she was entrusted with proprietary information. He described her as very honest and trustworthy (Tr. 48-50).

Applicant’s current manager, who has known her for seven years, described her as “wonderful” and his “right-hand person.” She has been entrusted with sensitive information and has never violated security procedures or compromised any information (Tr. 53-54).

I have taken administrative notice of the following adjudicative facts. Iran is a theocratic Islamic republic dominated by Shia Muslim clergy, with ultimate political authority vested in a learned religious scholar. Iran’s government is hostile to the U.S. Current U.S. concerns about Iran are based on its efforts to acquire nuclear weapons and weapons of mass destruction; support for and involvement in international terrorism; support for violent opposition to the Middle East peace process; and its human rights abuses, including summary executions, torture, arbitrary arrest and

detention, and restrictions on civil liberties. Iran has provided guidance, training, and weapons to Shia political and militant groups in Iraq. It also provides encouragement, training, funding, and weapons to anti-Israeli terrorist groups in its efforts to undermine the Arab-Israeli peace process, and it advocates the destruction of Israel. The U.S. has designated Iran as a state sponsor of terrorism in 1984, and now regards it as the most active sponsor of terrorism in the world. The U.S. broke diplomatic relations with Iran in April 1980, prohibits most trade with Iran, and uses multilateral sanctions and diplomatic pressure to contain the threats posed by Iran.

I have also taken administrative notice that Iran does not recognize dual citizenship. Iranian-born, naturalized U.S. citizens are considered solely Iranian citizens by the Iranian authorities, and they are required to enter and exit Iran on an Iranian passport. While traveling or residing in Iran, they are subject to surveillance, search, harassment, arrest, and imprisonment.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant

has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline C, Foreign Preference

The SOR alleges Applicant exercises dual citizenship with Iran and the U.S. (SOR ¶ 1.a); she possessed an Iranian passport issued in March 1998 and renewed it in November 2003 (SOR ¶ 1.b); and she intends to renew her Iranian passport, which expired in March 2008 (SOR ¶ 1.c). The concern under Guideline C is as follows: “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.” AG ¶ 9.

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.” ISCR Case No. 98-0252 at 5 (App. Bd. Sep 15, 1999).

A disqualifying condition may arise from “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not limited to “possession of a current foreign passport.” AG ¶ 10(a)(1). A disqualifying condition also may arise from “any statement or action that shows allegiance to a country other than the United States.” AG ¶ 10(d). Applicant’s possession of an active Iranian passport after becoming a U.S. citizen raises AG ¶ 10(a)(1). Her renewal of her Iranian

passport and use of it to enter and depart Iran after becoming a U.S. citizen raises AG ¶ 10(d).

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶10(a)(1) and (d), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(a). This mitigating condition is established. Applicant was born in Iran of Iranian parents, but she left as a teenager and never returned, except for three visits to her family in 1998, 2003, and 2006.

Security concerns based on dual citizenship can be mitigated if “the individual has expressed a willingness to renounce dual citizenship.” AG ¶ 11(b). This mitigating condition is established because Applicant testified she is willing to “denounce” her Iranian citizenship if it is possible.

Security concerns based on possession or use of a foreign passport may be mitigated if “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” AG ¶ 11(e). This mitigating condition is established because Applicant’s Iranian passport has expired, she does not intend to renew it, and she is willing to surrender or destroy the expired passport if necessary. She has refuted the allegation in SOR ¶ 1.c that she intends to renew her Iranian passport.

Guideline B, Foreign Influence

The SOR alleges Applicant’s father, stepmother, sister, and stepbrother are citizens and residents of Iran (SOR ¶¶ 2.a and 2.b), and that she traveled to Iran in 1998, 2003, and 2006 (SOR ¶ 2.c).

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Applicant's travel to Iran was solely to visit her family. Except for the fact that she used an Iranian passport to enter and exit Iran, her foreign travel has no independent security significance. See ISCR Case No. 02-26978 (App. Bd. Sep 21, 2005).

A disqualifying condition under this guideline may be raised by "contact with a foreign 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." AG ¶ 7(a). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Under the old guidelines, any risk of foreign influence was sufficient to raise a potentially disqualifying condition. The new guidelines require a "heightened risk." "Heightened risk" is a relative term denoting a risk greater than the normal risk inherent in having a family member living under a foreign government. Applicant has no significant contact with her stepmother or stepbrother, but she has contact as well as ties of affection and obligation with her father and sister. The requirement for a "heightened risk" in Applicant's case is satisfied by the presence of her father and sister in Iran, the nature of the Iranian government, and its hostility towards the U.S.

A disqualifying condition also may be raised by "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." AG ¶ 7(b). The presence of Applicant's father and sister in Iran is sufficient to raise AG ¶ 7(b).

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Iran's hostility to the United States places a "very heavy burden of persuasion" on applicant to overcome the security concerns that are raised when an applicant has immediate family members living in Iran. See ISCR Case No. 04-11463 at 4 (App. Bd.

Aug. 4, 2006. With its adversarial stance and its poor human rights record, it is not unlikely that Iran would target any citizen in an attempt to gather information from the United States.

Security concerns under this guideline can be mitigated by showing that “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 interests of the U.S.” AG ¶ 8(a). Neither Applicant’s father nor her sister are employed, involved in high technology industry, or connected to the Iranian government, Nevertheless, Applicant cares about her father and sister, and it is not unlikely that Iran would target them in an attempt to exercise indirect influence through them to gather information from the United States. I conclude AG ¶ 8(a) is not established.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 8(b). Applicant’s loyalty, affection, and sense of obligation toward her father and sister are much more than “minimal,” but her relationships and loyalties in the U.S. are strong. She came to the U.S. before the Iranian revolution and has never lived under the current Iranian regime. She has been a U.S. citizen for more than 12 years, and her spouse has been a U.S. citizen for more than 30 years. She has worked as a contractor for various federal agencies for almost 16 years. She has a sister, two nephews to whom she is very attached, and a granddaughter in the U.S. All of her spouse’s family are in the U.S. Her sister in Iran is trying to come to the U.S. When Applicant learned that an active Iranian passport raised security concerns, she chose not to renew it. She is willing to renounce her Iranian citizenship. All her property interests, which are considerable, are in the U.S. I am satisfied she would resolve any conflict of interest in favor of the U.S.

Security concerns under this guideline also may be mitigated by showing that “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.” AG ¶ 8(c). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). This presumption applies to Applicant’s contacts with her father and sister, and she has not rebutted it. I conclude Applicant has not met her burden of establishing this mitigating condition.

Whole Person Concept

Under the whole person concept, an 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. An 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) the 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 have incorporated my comments under Guidelines B and C in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature woman who has lived all her adult life in the U.S. She shares the prevailing U.S. view that the Iranian government is an evil regime. She presented herself at the hearing as a thoughtful, intelligent woman. She was sincere, candid, and credible.

After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign and foreign preference. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge