



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



In the matter of:)	
)	
)	ADP Case No. 08-10099
SSN:)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

September 29, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Foreign Influence trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

On November 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline B, Foreign Influence. The action was taken under Executive Order (EO) 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); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG).

Applicant answered the SOR in writing on March 15, 2010, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on May 18, 2010, and reassigned to me on June 18, 2010. DOHA issued a notice of hearing on July 13, 2010, and the hearing was convened as

scheduled on August 12, 2010. DOHA received the transcript of the hearing (Tr.) on August 20, 2010.

Procedural and Evidentiary Rulings

Notice

Applicant affirmatively waived her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Iran. Applicant did not object to the request, and it was approved. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. The facts administratively noticed are set out in the Findings of Fact, below.

Evidence

The Government offered Exhibits (GE) 1 and 2, which were received without objection. Applicant testified and submitted Exhibit (AE) A, which was admitted without objection.

Findings of Fact

Applicant is a 35-year-old engineer employed by a defense contractor. She has worked for her current employer as a subcontractor since 2007 and directly since 2008. Applicant was born in Iran. She is seeking eligibility for a public trust position for the first time. She has a bachelor's degree. She is married, and she has two children, ages 16 and 14.¹

Applicant and her husband married in Iran in the early 1990s. Applicant immigrated to the United States the following year. She became a U.S. citizen in 2003. Applicant's husband was born in Iran and came to the United States when he was in his early teens. He was a U.S. citizen when they married. Because of Iranian law, he was also a citizen of Iran.²

Applicant's parents are citizens and residents of Iran. Her father is a retired teacher. Her mother does not work outside the home. Applicant has four siblings who are citizens and residents of Iran. One sibling is married to a taxi driver; two siblings are in school; and one sibling recently graduated from school and is living with Applicant's parents. Applicant's mother-in-law and sister-in-law are citizens and residents of Iran. Applicant's remaining in-laws all live in the United States. Her mother-in-law lived in the United States but moved back to Iran after Applicant's father-in-law passed away. Her

¹ Tr. at 31-32, 42-44, 48-49; GE 1, 2.

² Tr. at 36, 43-45, 49; GE 1, 2.

mother-in-law does not work. Her sister-in-law works for a U.S. corporation doing business in Iran. None of Applicant's or her husband's immediate family members work for the Iranian government.³

Applicant retained her Iranian passport after she became a U.S. citizen. As discussed below, Iran continued to consider her an Iranian citizen after she became a U.S. citizen, and it does not recognize her U.S. citizenship. Applicant and her children visited her family in Iran in 2004. She wanted to introduce her children to her family. She visited her family in Iran again in 2008. Her children did not accompany her on this trip. She used her Iranian passport on both trips. Applicant destroyed her Iranian passport in March 2009. She realizes that she cannot visit Iran without an Iranian passport. She is resigned to the fact that she cannot visit Iran while she is holding a public trust position. Applicant's husband has not been back to Iran since their wedding in the early 1990s.⁴

Applicant does not own any foreign assets. She and her husband own a house in the United States. She credibly testified that her loyalty and allegiance are to the United States.⁵

Iran

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. The United States has not had diplomatic relations with Iran since 1980. In 2008, President Bush stated that "[t]he actions and policies of the Government of Iran are contrary to the interests of the United States in the region and pose a continuing unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." The United States has defined the areas of objectionable Iranian behavior as:

- Iran's efforts to acquire nuclear weapons and other weapons of mass destruction (WMD);
- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process; and
- Its dismal human rights record.

The U.S. has designated and characterized Iran as the world's leading state sponsor of terrorism. Iran provides critical support to non-state terrorist groups. Iran has sought to make the United States suffer political, economic, and human costs. Further, Iran has engaged in efforts to sow violence and undermine stability in Iraq and Afghanistan, including lethal support for groups that are directly responsible for hundreds of U.S. casualties.

³ Tr. at 46, 52-61; Applicant's response to SOR; GE 1, 2.

⁴ Tr. at 47-51; Applicant's response to SOR; GE 1, 2; AE A.

⁵ Tr. at 61-63, 66.

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include political killings and incarceration; summary executions, including of minors; disappearances; religious persecution; torture; arbitrary arrest and detention, including prolonged solitary confinement; denial of due process; severe restrictions on civil liberties - speech, press, assembly, association, movement and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.

The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. U.S. citizens who were born in Iran and the children of Iranian citizens, even those without Iranian passports who do not consider themselves Iranian, are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. U.S.-Iranian dual nationals have been denied permission to enter/depart Iran using their U.S. passport; they even had their U.S. passports confiscated upon arrival or departure. U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Iranian security personnel may place foreign visitors under surveillance. Hotel rooms, telephones, and fax machines may be monitored, and personal possessions in hotel rooms may be searched.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Section 7 of EO 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The trustworthiness concern for Foreign Influence is set out in AG ¶ 7:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

(a) 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;

(b) 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; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's parents and siblings are citizens and residents of Iran, a country that is clearly hostile to the United States.⁶ Her husband is a U.S.-Iranian dual citizen. His mother and sister are citizens and residents of Iran. Applicant traveled to Iran in 2004 and 2008. Iran is considered the world's leading state sponsor of terrorism, and the government of Iran has committed numerous, serious human rights abuses against its people. Applicant's family members' presence in Iran creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, both through her and through her husband. It also creates a potential conflict of interest. AG ¶¶ 7(a), 7(b), and 7(d) have been raised by the evidence.

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8:

(a) 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.;

(b) 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; and

(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.

Applicant has been in this country for more than 15 years and has been a U.S. citizen since 2003. Her husband is a U.S. citizen, and Iran also recognizes him as an

⁶ ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007).

Iranian citizen. They have two children who were born in the United States. Applicant and her husband own a house in the United States. She has no foreign assets. She has destroyed her Iranian passport, and she is resigned to the fact that she cannot visit Iran while she is holding a public trust position. Her life, career, assets, interests, and allegiance all lie in the United States. Her family members in Iran, including in-laws, have no connection to the Iranian government and no incentive to bring Applicant to the attention of the Iranian government. It is therefore, unlikely Applicant will be placed in a position of having to choose between the interests of the Iranian government, a terrorist organization, or her family members in Iran and the interests of the United States. I further find there is no conflict of interest, because Applicant has such deep and longstanding relationships and loyalties in America, that she can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(a) is partially applicable. AG ¶ 8(b) is applicable. No other mitigating condition is applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. The 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 public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant was born in Iran. She married her husband in Iran in the early 1990s and immigrated to the United States the following year. Her husband is a U.S. citizen. She has two children who were born and raised in the United States as U.S. citizens. Applicant became a U.S. citizen in 2003. She traveled to Iran on an Iranian passport in 2004 and 2008 to visit relatives. The use of his Iranian passport was not because Applicant maintained a sense of loyalty or allegiance to Iran; it was the only viable option for Applicant to travel to Iran, and was consistent with the information provided by the State Department, as stated in the Hearing Exhibits. She destroyed the passport and does not intend to return to Iran while holding a position of public trust.

I considered the totality of Applicant's family ties to Iran, a country that is clearly hostile to the United States, and the heavy burden an applicant carries when he or she has family members in a hostile country. The nature of a nation's government, its relationship with the United States, 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism. Iran is the world's leading state sponsor of terrorism and has a dismal human rights record. Applicant's family members have no connection to the Iranian government and have no reason to raise Applicant's profile with the Iranian government. These facts minimize any potential for pressure, coercion, exploitation, or duress. Applicant was sincere, open, and honest at the hearing. In the unlikely event that her family members were subjected to coercion or duress from the Iranian government or terrorist groups, I find that because of her deep and longstanding relationships and loyalties in the United States, including her uncompromising commitment to her country and her children, that Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has mitigated the Foreign Influence trustworthiness concerns.

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: FOR APPLICANT

Subparagraphs 1.a-1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Edward W. Loughran
Administrative Judge