



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case No. 09-00526
)
)
Applicant for Public Trust Position)

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

June 11, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to ADP I/II/III sensitive information is granted.

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Sensitive Information Systems Positions (ADP I/II/III), as defined in the Department of Defense (DoD) Regulation 5200.2-r, *Personnel Security Program* (January 1987), as amended (Regulation).

On December 14, 2005, Applicant completed a Public Trust Position Application (SF 85P #1). She submitted a second application on June 5, 2008 (SF 85P #2). On September 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B

(Foreign Influence) and Guideline C (Foreign Preference). 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 30, 2009, and requested a hearing before an administrative judge. On February 18, 2010, DOHA assigned the case to me. On February 25, 2010, DOHA issued a Notice of Hearing setting the case for March 26, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified and called four witnesses. She offered Applicant Exhibits (AE) A through N into evidence without objection. The record remained open until April 16, 2010, to give Applicant an opportunity to submit additional information. On April 9, 2010, Applicant submitted three documents that were marked as AE O, P, and Q. I admitted them into evidence without objection. DOHA received the hearing transcript (Tr.) on April 6, 2010.

Procedural and Evidentiary Rulings

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. The request and the attached documents pertinent to Iran are included in the record as Hearing Exhibits (HE) I through XV. Those documents were admitted by stipulation. (Tr. 16.) The facts administratively noticed are limited to matters of general knowledge and pertinent to Iran, and not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her Answer to the SOR, Applicant admitted all allegations contained in SOR ¶ 1, and ¶ 2, and provided information in support of her answers.

Applicant is 41 years old and never married. She was born in Iran. She went to high school and earned a bachelor's degree in computer science there. After finishing college, she worked at an Iranian university in the field of information technology from July 1991 until June 1996. (Tr. 90.)

Applicant immigrated to the United States in 1996. At the time, her parents were living here. From October 1996 to January 2000, she worked as a programmer for a private company. (GE 2.) From January 2000 to June 2004, she worked as a director of development for another private company. In May 2002, she earned a master's degree in computer science from a U.S. university. (Tr. 85.) She became a naturalized U.S. citizen in September 2002 and obtained a U.S. passport in October 2002. (GE 2.)

Applicant began employment with a federal contractor in July 2004, as a software development manager. Her annual salary is \$106,000. (Tr. 102.) She owns a house and

condominium in the United States. (Tr. 103.) She contributes to a 401(k) retirement plan through her employer. (Tr. 104) Her assets total approximately \$687,000 and are located in the United States. She does not have any assets in Iran. (Tr. 104; GE 3 at 23.) She does not receive any form of pension or retirement benefits from Iran. (Tr. 102.)

Applicant's parents were born in Iran. Her father worked as an accountant for a government agency from October 1960 to May 1980. Her mother taught school from July 1964 to June 1984. (GE 3.) They moved to the United States in 1990 and later became U.S. citizens. They reside with Applicant, who provides their financial support. (Tr. 88.) They do not receive any monies from the Iranian government. They do not own property in Iran. (Tr. 103.) They do not have active Iranian passports. (Tr. 86.) The last time they traveled to Iran was in 2008 with Applicant. (Tr. 89.)

Applicant has one sister, who was born in Iran. She is a naturalized U.S. citizen, residing in the United States. (Tr. 87.) At this time, she has two cousins, who are citizens and residents of Iran. One of them works for a pharmaceutical company and the other owns an orchard. (Tr. 101.) They have telephone contact a couple times a year. (GE 2 at 11, 12.) She visited them on her trips to Iran. One of her Iranian cousins is studying in Sweden. Another Iranian cousin immigrated to the United States with his wife. (Tr. 100-101.) Her aunts and uncles live in the United States. (Tr. 100.)

Applicant has two friends from college who are Iranian citizens. (Tr. 96.) One of them works for a private company there. They have not spoken for about a year, but have emailed one another over the years. (GE 3 at 8.) She visited her in 2008. (Tr. 98.) Another college friend lives in Dubai. She is married to U.S. immigrant, and is waiting to move to the United States. They email one another occasionally. (Tr. 97.)

Applicant renewed her Iranian passport in November 2007, which is valid until November 2012. (GE 4 at 2.) She did so, in order to enter Iran, which will not recognize any foreign passport for an individual born in Iran. (GE 3.) After becoming a U.S. citizen, she used that passport to enter and exit Iran in January 2004, March 2006, and April 2008. (Tr. 92.) She has not used that passport for travel to any other country. (Tr. 92.) On a couple trips, her parents accompanied her. All of them stayed with family or friends. (Tr. 93.) In Interrogatories that Applicant completed in July 2009, she indicated that she was willing to destroy the passport, if necessary. (*Id.* at 28.) On April 6, 2010, Applicant's employer destroyed her Iranian passport. (AE P, O.) She is willing to formally renounce her Iranian citizenship, but does not know how to legally do so. (Tr. 94-95.) She has no intention to return to Iran in the future. (Tr. 76.) Her closest friends are no longer there and it is dangerous to visit Iran. (Tr. 105.)

Four witnesses testified on behalf of Applicant, all of whom work for her employer. The vice-president of operations, a retired Army colonel, has daily contact with Applicant. He previously held top secret clearances and now holds a secret clearance. As a former military officer, he understands the security clearance process and security concerns. He is aware that Applicant's Iranian background and passport

have raised concerns. He does not question her loyalty and considers her performance to be “unequivocally outstanding.” (Tr. 30.) He believes that should she be confronted with having to choose between a relative or a friend in Iran and American interests, she would choose the United States. (Tr. 31, 16-28.) The vice president of the reserve health readiness program testified. He has worked with Applicant at both her current and previous place of employment. He has a secret clearance. He considers her a “very trustworthy individual. And I wouldn’t be here if I didn’t believe that 100 percent.” (Tr. 41; 36-42.)

The director of event management testified. He met Applicant in February 2005. He considers her to be honest and a person of high integrity. He has no reason to believe that she should not have access to sensitive information. (Tr. 47; 43-53.) Another former employer testified. He met Applicant 15 years ago, when she applied for a position in 1996 with a company he co-founded. He now works for her current employer and is her direct supervisor. Based on his observation of her over the years, he believes she is loyal to the United States and prefers it to Iran. (Tr. 57; 56-65.)

Applicant submitted copies of her 2007, 2008 and 2009 performance evaluations. Appellant’s performance appraisal reflected that she consistently met the expected standard of the critical elements of her job and often exceeded the standards. (AE L, N, and M.) She also submitted recommendation letters from eight co-workers. All of the letters compliment her work ethic and integrity. (AE B, C, D, E, F, G, H, and I.)

Applicant expressed her loyalty to the United States. She stated, “There is no question or no, really no doubt in my mind about the preference that I have between U.S. and Iran. I mean U.S. is where I live and I want to live. And that’s where I came to live to have this life.” (Tr. 111.)

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 U.S. has not had diplomatic relations with Iran since 1980.¹

The U.S. Government has defined the areas of objectionable Iranian behavior as: (1) Iran’s efforts to acquire nuclear weapons and other weapons of mass destruction; (2) Its support for and involvement in international terrorism; (3) Its support for violent opposition to the Middle East peace process; (4) Its dismal human rights record; and (5) Iran’s intervention in the internal affairs of Iraq.² The U.S. has designated and

¹ U.S. Department of State, *Background Note: Iran*, dated March 2010.

² *Id.*

characterized Iran as the most active state sponsor of terrorism. Iran provides critical support to non-state terrorist groups.³

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.⁴

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 and depart Iran using their U.S. passports; 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.⁵

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.)

³U.S. Department of State, *State Sponsors of Terrorism*, April 30, 2009.

⁴U. S. Department of State, *2009 Human Rights Report: Iran, Country Reports on Human Rights Practices*, dated March 11, 2010.

⁵ U.S. Department of State, *Travel Warning: Iran*, dated July 1, 2009.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

A person who applies for access to sensitive information seeks to enter 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 protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order 10865 provides that "[a]ny determination under this order adverse to an applicant shall be a determination 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 C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, and then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes two conditions that could raise a security concern and may be disqualifying:

(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 includes but is not limited to:

(1) possession of a current foreign passport; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant was born in Iran. She arrived in the United States in 1996 and became a naturalized U.S. citizen in September 2002. She obtained a U.S. passport in October 2002. In November 2007, she renewed her previously issued Iranian passport, which she was able to do because she was born in that country. Renewing her passport was an action she took in order to obtain recognition of Iranian citizenship, so she could travel there. In January 2004, March 2006, and April 2008, she used that passport to enter and exit Iran. She possessed that current passport until April 2010, when it was destroyed. These facts are sufficient to raise the above disqualifying conditions.

After the Government raised a potential disqualification, the burden shifted to Applicant to establish any appropriate mitigating condition. AG ¶ 11 provides three conditions that could mitigate those concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant's previous Iranian citizenship was based on her parents' citizenship and her birth in Iran. Applicant expressed her willingness to formally renounce her Iranian citizenship during the hearing, but does not know how to legally do so. In April 2010, she surrendered her current Iranian passport to her employer, who then destroyed it. She has no intention to return to Iran. Accordingly, the above mitigating conditions provide mitigation of the security concerns that were raised.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

(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; exploitation, inducement, manipulation, pressure, or coercion;⁶ and,

(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.

Since leaving Iran, Applicant periodically telephones two cousins, residing in Iran. Both are citizens of Iran. She also contacts a college friend periodically. Applicant's connections to these two family members and one friend could create a potential conflict of interest between her security obligations and desire to help them, only in a

⁶ The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

situation wherein they were taken hostage or otherwise threatened with harm if she did not cooperate with terrorists or their governments. None of these people have connections with the Iranian government or have positions in which they could otherwise benefit from her access to sensitive information or technology. However, under either disqualifying condition, security concerns in this case could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to her family members and her long-standing friend who are citizens of and reside in Iran.

The Government produced substantial evidence of these disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 8 provides three conditions that could mitigate the above security concerns:

(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.

In this case, Applicant has contact with two cousins and one friend, who are residents and citizens of Iran. The current positions and activities of those people do not involve the government or military and they would have no interest in acquiring protected information. However, her relationships and contact with them potentially create a heightened risk of foreign pressure or attempted exploitation because terrorists in Iran seek intelligence and are hostile to U.S. interest. Their physical presence in Iran creates the potential that their well-being could be threatened to the point that Applicant would confront a choice between safeguarding their interests versus those of the United States. Hence, AG ¶ 8(a) has limited application to the raised security concerns.

Applicant produced significant evidence establishing AG ¶ 8(b). Based on her relationship and depth of loyalty to the United States, she can be expected to resolve any conflict of interest in favor of the United States. She has lived in the United States since 1996 and became a naturalized U.S. citizen in 2002. She received an advanced degree from a U.S. university. Her parents are U.S. citizens, residing in the United

States with her. Her sister and other family members are citizens and residents of the United States. She owns property and holds bank accounts in the United States. Her U.S. assets total more than over \$600,000 and no financial interests in Iran. She has limited contact with two cousins and friend, residing in Iran. She is a valued employee at her current position, earning a good salary and accolades from her employer.

Since leaving Iran, Applicant has maintained ongoing, albeit sporadic, communication with two cousins and one friend in Iran. She visited them in 2002, 2004, 2006, and 2008. Hence, AG ¶ 8(c) cannot apply, as those contacts have been sufficiently frequent and not casual over the years.

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 applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must include an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Four circumstances weigh against Applicant in the whole-person analysis. First, there is a significant risk of terrorism and human rights abuses Iran. More importantly for security purposes, terrorists are hostile to the United States and actively seek classified information. Terrorists could attempt to use Applicant's two cousins and friend to obtain such information. Second, she had numerous connections to Iran before she immigrated to the United States in 1996. Following her birth, she spent her formative years there. She was educated at an Iranian university where she subsequently worked for several years. Third, two cousins and one friend are citizens and residents of Iran. Fourth, she visited friends and family

in Iran in 2002, 2004, 2006, and 2008, using her Iranian passport for three of those trips after becoming an American citizen.

Substantial mitigating evidence weighs in favor of granting Applicant access to sensitive information. She is a mature person, who has lived in the United States for 13 years, and has been a naturalized citizen for seven years. Her parents have lived in the United States since the early 1990s and subsequently became U.S. citizens. They reside with her. Her only sibling is a naturalized U.S. citizen and resident. Her aunts and uncles are U.S. citizens and residents, as are some of her cousins. Her familial and financial ties to the United States are much stronger than her ties to two cousins and one friend residing in Iran. She is successfully working for a federal contractor, as impressively documented by her supervisors' testimony and numerous letters of recommendation from other colleagues. The witnesses that testified at her hearing uniformly believed Appellant to be dependable, honest, trustworthy, and dedicated to her job. None of the witnesses had any reservations about Applicant having access to sensitive information. She credibly asserted her allegiance to the United States and desire to renounce her Iranian citizenship. Her Iranian passport was destroyed and she does not intend to return there. There is no derogatory information about her in the record.

On balance, Applicant presented sufficient evidence to fully mitigate reliability and trustworthiness concerns arising under the guidelines for foreign preference and foreign influence. Overall, the record evidence leaves no doubt as to Applicant's present eligibility and suitability for a public trust position.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to ADPI/II/III is granted.

SHARI DAM
Administrative Judge