



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



In the matter of: ----- SSN: ----- Applicant for Security Clearance))))))	ISCR Case No. 09-06862
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Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

September 20, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On April 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). 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).

In an April 28, 2010, response, Applicant admitted the two allegations raised under Guideline C regarding her Iranian passport. She also admitted the four allegations raised concerning her family members in Iran and her frequent visits to that country. She also requested a hearing before an Administrative Judge. The case was ultimately assigned to me on August 3, 2010. Department Counsel and Applicant agreed to an August 25, 2010, hearing date. A Notice of Hearing was issued by DOHA on August 6, 2010, setting the hearing for that date.

The hearing took place as scheduled. Department Counsel submitted three documents which were accepted into the record as exhibits (Exs.) 1-3 without objection. She also presented documents marked 17 administrative notice documents (AN) marked as AN 1-17 without objection. Applicant gave testimony and presented no documents. Applicant was given until September 3, 2010, to submit any additional materials. The transcript (Tr.) was received on September 1, 2010. No additional documents were received from Applicant and the record was closed on September 3, 2010. Based upon a review of the case file, exhibits, and testimony, security clearance is denied.

Administrative Notice

The Government requested administrative notice of certain facts related to Iran, as represented in documents accepted into the record as AN 1-17.¹ Iran is an Islamic Republic where ultimate authority is vested in a religious scholar, the Supreme Leader. The United States (U.S.) has not had diplomatic or consular relations with Iran since 1979, when the U.S. Embassy was seized by students. In 2006, the November 14, 1979, declaration of a National Emergency with Respect to Iran was continued due to Iran's "extraordinary threat to the national security, foreign policy, and economy" of the U.S.² Iran has challenged the U.S. in Iraq and Afghanistan in order to pursue its objective of becoming a regional power. It has sought to make the U.S. suffer political, economic, and human costs. It has also been designated as a State Sponsor of Terrorism since 1984.³ Iran is currently seeking to acquire nuclear weapons and other weapons of mass destruction, and to illegally obtain U.S. military equipment and other sensitive technology.⁴ The United States objects to Iran's sponsorship of terrorism, its nuclear weapons ambitions, and its violations of human rights.⁵

The Iranian government has a poor human rights record.⁶ Its abuses include politically motivated abductions, torture and severe punishment, arbitrary arrest and detention, lack of fair trials, and restrictions on civil liberties.⁷ It has been known to both

¹ The Governments request for administrative notice of certain facts with respect to Iran is prefaced by a six-page summary and index of materials. See AN 1.

² AN 4 (The White House, Office of The Press Secretary, *Notice: Continuation of the National Emergency With Respect to Iran*, dated Nov. 12, 2009).

³ AN 5 (U.S. State Department, *State Sponsors of Terrorism*, dated Nov. 13, 2009).

⁴ See, e.g., AN 9 (U.S. Department of Commerce, Bureau of Industry and Security, *Pennsylvania Company Fined for Export Violations Involving Iran, UAE, and Syria*, dated Dec. 7, 2007).

⁵ AN 3 (U.S. Department of State, *Background Note: Iran*, dated Sep. 30, 2009).

⁶ AN 12 (U.S. Department of State, *2009 Human Rights Report: Iran*, dated Mar. 11, 2010). See also AN 14 (U.S. Department of State, Press Release, *UN Calls on Iran to Address Serious Human Rights Violations*, dated Nov. 20, 2009).

⁷ *Id.*

monitor and conduct surveillance on its citizens, including interception of telephonic and internet communication.⁸ The government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens. It has prevented a number of Iranian-American citizens who traveled to Iran for personal reasons from leaving, and in some instances, detained and imprisoned them.⁹ Iranian security personnel may put visitors under surveillance and search hotel rooms. The United States recently requested “the safe and rapid return of all detained and missing citizens in Iran to their respective countries so that they might be reunited with their families,” including U.S. and Canadian citizens and those who are dual-nationals with Iran.¹⁰

Findings of Fact

Applicant is a 43-year-old senior software developer who has worked for the same employer, a U.S. government contractor, for over a year. She has earned a bachelor’s degree in computer science and a master’s degree in telecommunications information systems from major U.S. universities. She is married and has no children.

Applicant was born in Iran. Around 1989, she came to the United States to further her education.¹¹ After she completed her undergraduate work, she took some time off before beginning work on a master’s degree at another U.S. university. During her graduate program, Applicant visited her family in Iran and her father visited her in the United States. She completed her education in about 1993 and decided to remain in the United States. From 1994 until 1997, she was briefly married to her first husband. By 2000, she was working for a local county in her state of residence as a information technology contractor/software developer. In May 2001, Applicant married a fellow emigre from Iran, whom she met in the United States through family connections.¹² He is a dual-national of Iran and the United States.¹³ In 2005, she became a U.S. citizen. In 2008, she worked for a private tutoring agency before beginning her current work in early 2009.

⁸ *Id.*

⁹ AN 2 (U.S. Department of State, *Iran – Country Specific Information*, dated Oct. 30, 2009, at 1) and AN 17 (*Travel Warning: Iran*, dated Apr. 20, 2010)..

¹⁰ AN 15 (U.S. Department of State, Press Release, *Secretary Clinton and Foreign Minister Cannon Express Concern Over Continued Detention of U.S. and Canadian Nationals in Iran*, dated Sep. 25, 2009). Specifically noted in the request are Iranian-American and Iranian-Canadian journalists, scholars, a retiree, and American hikers.

¹¹ Tr. 23, 25.

¹² Tr. 27-28; Ex. 1 (Security Clearance Application, dated Mar. 4, 2009). Elsewhere, she stated that she has only been married for “over 11 years.” Tr. 22. Applicant’s husband is a U.S. citizen, works for a local county government, and has no immediate relatives still residing in Iran.

¹³ Response to the SOR, dated Apr. 28, 2010.

Remaining in Iran are Applicant's father and three siblings. Her father is retired. A former merchant in the private sector, he is currently 74 years old. Applicant calls him daily to check on his well-being.¹⁴ He has had a heart attack and prostate cancer, and is possibly experiencing early symptoms of Alzheimer's disease. Due to his health and age, he can no longer visit Applicant in the United States alone, and Applicant's sister, who helps care for him, cannot obtain a visa to visit the United States.¹⁵

Applicant's sister is a homemaker in Iran. She has three children and is about 38 years old. Her husband is a self-employed businessman. She has been denied a visa to visit the United States five times.¹⁶

Applicant has two brothers also living in Iran. One brother is about 45 years old and is a construction contractor. He owns his own company. He is not married. He has been able to obtain a visa to visit the United States, which he did about five or six years ago. Applicant's other brother is about 28 years old. He is a self-employed tea merchant. He is also single. He has been unable to obtain a visa to visit the United States.

Because Applicant calls her father daily, she speaks with various siblings whenever one is visiting their father. If she cannot reach her father by telephone, she will call her siblings to check on his well-being.¹⁷ Otherwise, her contact with her siblings varies.¹⁸ Their contact is usually by telephone or in person when Applicant visits Iran. Applicant has visited Iran regularly since about 2002. Except for 2009, she has made annual trips to Iran since 2006.¹⁹ Her visits range from three to five weeks in length. Applicant will visit her family in Iran more than once a year depending on the circumstances, such as problems with her father.²⁰ When there, she sometimes visits

¹⁴ Tr. 30.

¹⁵ Tr. 31.

¹⁶ Tr. 32.

¹⁷ Tr. 35.

¹⁸ *Id.*

¹⁹ Applicant visited Iran annually between 2006 and 2008, and plans on visiting in 2010 "if something comes up." See Tr. 36. She has used her Iranian passport to facilitate her passage into and out of Iran since becoming a U.S. citizen.

²⁰ Tr. 36. Applicant tries to help share with the responsibilities related to her father.

her aunts, uncles, and cousins.²¹ In 2009, she forewent her annual trip to Iran. Instead, she met her father and her sister in Europe.²²

In order to facilitate her visits to Iran, Applicant applied for and received a new Iranian passport in 2006, a year after she became a naturalized U.S. citizen. She did so because Iranian law will not let her enter or exit the country without it because she is still considered an Iranian citizen.²³ She noted that “if they found out that you have given up your Iranian passport, they will very harshly retaliate on you. Especially now. They possibly . . . imprison you and, you know, they danger your family’s life and your own life. . . .”²⁴ Despite these concerns, Applicant continues to visit her family in Iran. She has never encountered any problems traveling in and out of Iran on her Iranian passport. Her family is not political.²⁵ Applicant has never voted in an Iranian election.²⁶

Applicant understands the security concerns posed by her use of her Iranian passport.²⁷ She is very willing to inform the Government of her travels abroad.²⁸ She emphasizes that she has a “clear background,” but is concerned her situation and her desire to continue using her Iranian passport could prevent her from obtaining a security clearance.²⁹

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are required in evaluating an applicant’s eligibility for access to classified information. 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.

²¹ Tr. 39.

²² Tr. 37.

²³ Tr. 36.

²⁴ *Id.*

²⁵ Tr. 38.

²⁶ Tr. 12.

²⁷ See, e.g., Tr. 11-13, 40.

²⁸ Tr. 40.

²⁹ Tr. 40-46.

Under AG ¶ 2(c), this 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 classified 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”³⁰ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.³¹

A person who seeks access to classified 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 classified information. Decisions include, by necessity, consideration of the possible risk an 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.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³³ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.³⁴ It is merely an indication that the

³⁰ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

³² *Id.*

³³ *Id.*

³⁴ Executive Order 10865 § 7.

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

Based upon consideration of the evidence, I find Guideline B (Foreign Contacts) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

Analysis

Guideline C – Foreign Preference

The concern regarding foreign preference is that when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decisions that are harmful to the interests of the U.S.³⁵ Conditions that could raise a security concern and may be disqualifying include 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.³⁶

The SOR contains two allegations concerning Applicant's exercise of dual citizenship with Iran and the United States. First, that she renewed her Iranian passport after becoming a naturalized U.S. citizen. Second, that she has used that Iranian passport to make annual visits to Iran since becoming a naturalized U.S. citizen. She admitted both allegations, raising Foreign Preference Disqualifying Condition AG ¶ 10(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. . .). With a foreign preference disqualifying condition raised, the burden shifts to Applicant to mitigate security concerns.

Before becoming a naturalized U.S. citizen in 2005, Applicant emigrated from Iran, the country of her birth. Consequently, Foreign Preference Mitigating Condition (FP MC) AG ¶ 11(a) (dual citizenship is based solely on parents' citizenship or birth in a foreign country) applies.

Applicant has not expressed either a willingness or an objection to formally renouncing her Iranian citizenship, *per se*. However, she has expressed her personal desire to retain her Iranian passport, which is recognized as a benefit of Iranian citizenship, and her reluctance to relinquish it. Therefore, FP MC AG ¶ 11(b) (the individual has expressed a willingness to renounce dual citizenship) does not apply.

³⁵ AG ¶ 9.

³⁶ AG ¶ 10(a).

Applicant actively renewed her Iranian passport in 2006, after becoming a naturalized U.S. citizen in 2005. Such facts obviate application of FP MC AG ¶ 11(c) (exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor).

There is no evidence that Applicant's use of an Iranian passport is approved by the cognizant security authority or that it has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated. Consequently, neither FP MC AG ¶ 11(d) (use of a foreign passport is approved by the cognizant security authority) nor FP MC AG ¶ 11(e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated) applies. Applicant has never voted in a foreign election. Therefore, FP MC AG ¶ 11(f) (the vote in a foreign election was encouraged by the United States Government) is inapplicable.

Although Applicant is an Iranian by birth, she became a naturalized U.S. citizen in 2006. Since then, she reaffirmed her rights of Iranian citizenship by renewing her Iranian passport. Administrative notice is taken of the difficulties and dangers inherent in travel to and from Iran without an Iranian passport, especially by those deemed by Iranian authorities to be Iranian citizens. It is partially because of those dangers, as well as issues of accountability, that foreign travel on an Iranian passport poses grave security concerns. Applicant is committed to using her Iranian passport for regular passage into and from Iran, rather than again meet family members in another country or have her 45-year-old brother, who has been able to get a visa to visit the United States, accompany their father to the United States. Given these facts, foreign preference security concerns remain unmitigated.

Guideline B – Foreign Influence

The concern under Guideline B is that 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. The adjudication 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 U.S. citizens to obtain protected information or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

The country at issue is Iran. Since 1979, with the ouster of the Shah and the occupation of the U.S. Embassy in Tehran, the U.S. has had no diplomatic or consular relations with Iran. For over 30 years, it has been cited as an "extraordinary threat to the national security, foreign policy, and economy of the U.S." It has sought to make the U.S. suffer political, economic, and human costs. Iran has been designated as a State

Sponsor of Terrorism, and courts anti-U.S. governments in the Western Hemisphere. Iran seeks to acquire nuclear weapons and weapons of mass destruction, as well as U.S. military equipment and other sensitive technology. Its human rights abuses are numerous, including the surveillance and arbitrary treatment of its citizens. Its pursuit of U.S. technology and its sponsorship of terrorism demand that considerations under this guideline be conducted with the highest scrutiny.

The SOR contains four allegations under this guideline. First, that Applicant's husband is a dual-national of Iran and the United States; second, that her father is a citizen and resident of Iran; third, that her siblings are citizens and residents of Iran; and fourth, that she has made regular visits to Iran since about 2002.

Applicant admitted that her husband is a dual-national of Iran and the United States, although he no longer has immediate family in Iran. She also admitted that her father and siblings are citizens and residents of Iran, and that she has traveled regularly to visit them. Since renewing her Iranian passport, she has visited Iran annually between 2006 and 2008. She may again travel there this year on that passport. In light of these considerations, Foreign Influence Disqualifying Conditions AG ¶ 7(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 exploitation, inducement, manipulation, pressure, or coercion) and AG ¶ 7(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) apply.

Iran's current regime has expressed intentions and purposes antithetical to the U.S. and its citizens. Despite the age and infirmity of her father, Applicant's testimony demonstrated that she is a loving daughter who shares responsibility for his well-being. She speaks with him by telephone on a daily basis. She visits him and her siblings at least once a year, depending on the circumstances, although she has thus far not visited Iran since 2008. During her visits, she sometimes also visits other relations living in Iran. Applicant demonstrated that she understands the security concerns related to her relatives and her visits to Iran, as well as the potential dangers to both her family and herself in her travels. Given her continued travels to visit her family in Iran, as well as her relationships and contacts with her father and siblings there, neither Foreign Influence Mitigating Conditions (FI MC) 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.) nor FI MC AG ¶ 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) applies.

Applicant is plainly a loving daughter and sister who cares for the well-being of her foreign relatives. While there is no suggestion that Applicant is not loyal to the U.S., countries like Iran invoke heightened scrutiny. Applicant and the documents submitted for administrative notice all mention the travails of travel within Iran by Americans. If Applicant is discovered to be a U.S. citizen traveling on an Iranian passport only as a matter of convenience, adverse repercussions could be directed at either her, her family, or both. Given these concerns and risks, FI MC AG ¶ 8(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) does not apply. Given these security concerns, arising as they do in the context of Iranian contacts, foreign influence security concerns remain unmitigated.

Whole-Person Concept

Under the whole-person concept, the 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. 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 security clearance 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, as well as the "whole-person" factors. Applicant is a highly credible and mature woman. She is well educated. She came to the United States to seek higher education around 1989, and ultimately became a U.S. citizen in 2005. For several years, she worked for a county government in her chosen field. She is married and comfortably settled in the United States. While her husband is a dual-national of Iran and the United States, he no longer has any immediate family in Iran and there are no other extraneous concerns noted regarding him, his loyalties, or risks related to him.

Applicant is clearly attached to her father. While his health has been challenged, he is only 74 years old and apparently capable of accompanied travel abroad. She shares responsibility for his well-being with her three siblings, who are residents and citizens of Iran. She speaks to her father by telephone daily, and her telephonic contact with her siblings appears to be regular. Rather than make alternative arrangements, she visits her family in Iran regularly. She does so believing her safety is maximized by her use of her Iranian passport. While one brother appears capable of accompanying their father to the United States, and while she has met with her father and sister in Europe, a trip that would not necessitate use of an Iranian passport, Applicant is adamant in maintaining her Iranian passport and continuing her travels to Iran. Both the Government and Applicant appreciate the difficult position of those desiring travel to and from Iran. They also appreciate the risks and the genuine security concerns posed by such travel at this time. Given those risks and concerns, security concerns regarding foreign influence and foreign preference remain unmitigated.

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 C:	AGAINST APPLICANT
Subparagraphs 1.a - 1.b:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a - 2.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge