



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



In the matter of: )  
)  
) ISCR Case No. 10-00926  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

June 23, 2011

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated the Foreign Preference or Foreign Influence security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C, Foreign Preference and 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); and the adjudicative guidelines (AG) effective after September 1, 2006.

Applicant answered the SOR on January 27, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 1, 2011. DOHA issued a notice of hearing on March 16, 2011, and the hearing was convened as

scheduled on April 8, 2011. The Government offered exhibits (GE) 1 through 3 and a 6-page Administrative Notice document with 15 attachments, marked hearing exhibit (HE) I, which were admitted without objection. The Applicant offered Exhibit (AE) A through C, which were admitted without objection, and testified on her own behalf. The record was held open for Applicant to submit additional information until April 20, 2011. Applicant submitted AE D, which was admitted without objection, post hearing. DOHA received the transcript of the hearing (Tr.) on April 20, 2011.

### **Findings of Fact**

Applicant is a 61-year-old senior-project engineer for a government contractor. Applicant testified she has worked for her current employer a total of 22 years, with breaks in service. She is divorced and has one adult son. She currently cohabitates with her boyfriend. (Tr. 31-32, 42-43, 51-53.)

Applicant was born in Iran. She spent the first 25 years of her life in Iran. From 1968 to 1972 she attended a university in Iran and earned a bachelor's degree in physics. After graduation she worked in Iran, while at the same time earning a master's degree in electronics. In 1975 she moved to the United States to pursue a master's degree in computer science. She intended to return to Iran after she earned this degree. However, the 1979 Iranian revolution changed her plans. She decided not to return to Iran when the Ayatollah required women to put scarves on their heads. (Tr. 26-27, 30-35; GE 1.)

Applicant has substantial ties to the United States. She became a United States citizen in November 1985 and has lived continuously in the United States since 1975. She has a U.S. passport, issued most recently in 2007 that she has used to travel internationally. She has no assets in Iran, but estimates her assets in the United States are valued at two-to-three million dollars. Her son lives in the same city as she lives, and she intends to retire in the United States. She actively participates in United States elections. Applicant has two brothers and several cousins who have also immigrated to the U.S. (Tr. 35-36, 38-44; GE 1.)

However, Applicant's ties to Iran are also substantial. She has one uncle and three aunts, who are citizens of and residents in Iran. She is very close to one aunt in particular, and Applicant talks to her via phone approximately once every two months. This aunt has cancer but it is currently in remission. Her aunt is retired and supported, in part, through a government-paid retirement. Applicant testified: "what's left of my family is trapped in that country and the bonds of my family are strong." She also has a friend and other family members that she visits with when she travels to Iran. However, she does not keep in contact with anyone besides her aunt when she is in the United States. (Tr. 28, 47-50, 56-59, 67-68; GE 1; GE 2; AE B; AE C.)

Applicant's boyfriend, with whom she resides, was also born in Iran and is a naturalized United States citizen. He has one brother that still resides in and is a citizen of Iran. He also has three sisters that reside in the United States; two are legal

permanent residents, and one is a citizen. Applicant met her boyfriend's brother in 2010 on her trip to Iran. (Tr. 51-53; GE 2; GE 3; AE B; AE C.)

Applicant started a non-profit agency to help Iranian artists. She established it in 2004 to promote Iranian artists in the United States. The non-profit is currently inactive. (Tr. 45,74-75.)

Since leaving Iran in 1975, she has returned to visit family on a number of occasions. She traveled to Iran in 1983, after her father passed away. She returned again in 1984, after her brother's wife died. From 2001-2005 she traveled to Iran, "frequently," including trips in February 2002, October 2003, May-June 2004, and December 2004-February 2005. On each trip to Iran, Applicant used her Iranian passport to enter Iran. In 2005, she applied for a security clearance. She was informed that she would need to relinquish her Iranian passport if she desired to obtain a security clearance. She willingly gave up her passport by surrendering it to her security officer. However, on May 27, 2008, she obtained a new Iranian passport that does not expire until May 2013. She used her new Iranian passport to travel on her most recent trips to Iran in April 2009 and May 2010. She informed her security office of her decision and indicated that she intended to keep her Iranian passport. (TR. 27-28, 36-38, 50, 57-64, 68, 70-73; GE 1; GE 2; GE 3; AE B; AE C.)

Applicant is well respected by her Principal Director. He wrote that he is "impressed by her work ethic, loyalty, and integrity and have not observed any behavior that would cause [him] to question her allegiance to the United States." In addition, her work performance evaluations reflect that she exceeds her objectives and performs satisfactorily in the areas of security and safety. (AE A; AE D.)

## **Iran**

Iran is a constitutional Islamic republic with a theocratic system of government in which the ultimate political authority is vested in a learned religious scholar. The United States has not had diplomatic relations with Iran since 1979. In 2009 President Obama continued the 1979 Declaration of a National Emergency with Respect to Iran "to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran." 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 violations of human rights.

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.

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include: politically motivated violence including torture, beatings and rape; severe officially sanctioned punishments, including death by stoning, amputation, and flogging; arbitrary arrests and detentions, often holding individuals incommunicado; lack of judicial independence and of fair public trials; severe restrictions on civil liberties, including freedoms of speech, press, assembly, association, and privacy; and monitoring the social activities of citizens, entering homes and offices, monitoring telephone conversations and internet communications, and opening mail without court authorization.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 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.

Section 7 of EO 10865 provides that adverse 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 C, Foreign Preference**

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. One is potentially applicable in this case:

(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.

In 1985 Applicant became a citizen of the United States. She has a United States passport and an Iranian passport both of which she uses. She obtained her current Iranian passport, after becoming a United States citizen. Further, in 2005 she relinquished her Iranian passport to her security officer as a condition for gaining access to classified information. However, in 2008, she reconsidered her decision to relinquish her Iranian passport and obtained another valid passport from Iran. Her actions demonstrate not only that she possesses a current foreign passport, but also that she may be prone to provide information or make decisions that are harmful to the interests of the United States. AG ¶ 10 applies.

Conditions that could mitigate Foreign Preference security concerns are provided under AG ¶ 11. Four are potentially applicable:

(a) dual citizenship is based solely on parent’s citizenship or birth in a foreign country;

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

(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; and

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

Applicant's Iranian citizenship is the result of her birth to Iranian parents. Therefore, AG ¶ 11(a) applies, regardless of her choice to exercise her dual citizenship by using her Iranian passport. However, evidence indicative of Applicant's Foreign Preference may still be considered, despite the applicability of this mitigating condition. The Appeal Board has noted that the presence or absence of any given Adjudicative Guideline disqualifying or mitigating condition is not solely dispositive of a case.<sup>1</sup> Further, the applicability of AG ¶ 11(a) "does not render irrelevant any other record evidence that might be indicative of a foreign preference under Guideline C."<sup>2</sup> Applicant has exercised her Iranian citizenship by using her foreign passports, after becoming a U.S. citizen, making AG ¶ 11(c) inapplicable. Further, the inquiry about Applicant's Foreign Preference must extend beyond whether she acquired her Iranian citizenship and look at her demonstrated preference for Iran through the use of her foreign passports. In this instance, after she had been granted access to classified information based in part on her decision to relinquish her Iranian passport, she decided to once again acquire an Iranian passport. She does not wish to relinquish her Iranian passport and expressed no willingness to renounce her dual citizenship. Applicant failed to establish that any mitigating conditions apply.

### **Guideline B, Foreign Influence**

The security concern for the Foreign Influence guideline 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 nine conditions that could raise security concerns under AG ¶ 7. Two 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

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<sup>1</sup> ICSR Case No. 03-23806 at 5 (App. Bd. April 28, 2005.)

<sup>2</sup> Id.

foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; 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 is close to her aunt in Iran. Further, her boyfriend, with whom she resides, has a brother who is a citizen and resident in Iran. She has traveled to Iran on numerous occasions to spend time with her family there, including two trips that occurred after she was granted access to classified information. Her connections and travel, coupled with the Iranian government's anti-American actions and statements, give rise to security concerns. If Applicant continues to have access to classified information, she could be subject to a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion by the Iranian authorities.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, including:

(a) the nature of the relationships with foreign persons, the country in which these people 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.

Iran's bellicose statements and actions in recent years, and the lack of diplomatic relations with the U.S., were a security concern when Applicant traveled there in 2009 and 2010. Applicant asserts her aunt is elderly, retired, and is not involved with the Iranian government. She has no assets in Iran. She speaks with her aunt only every two months. She does not communicate with her other relatives or her boyfriend's brother. However, she admits a strong connection to her aunt. Applicant exercised very poor judgment when, after obtaining U.S. citizenship and a security clearance, she chose to renew her Iranian passport and traveling to Iran in 2009 and 2010 to visit her aunt. It is likely Applicant will be placed in a position to choose between the interests of the United States, Iran, and her aunt. AG ¶ 8 (a) does not apply.

Applicant came to the United States in 1975. She has lived here continuously since then. Her son, siblings, and boyfriend are all in the United States and are naturalized U.S. citizens. All of her assets are in the United States. Applicant has a long-standing relationship with the United States. Her familial connections in Iran are likely to end when her aunt passes. However, AG ¶ 8(b) does not apply because Applicant showed a preference for Iran after becoming a U.S. citizen and after obtaining security clearance. When she chose to obtain an Iranian passport after she relinquished her previous Iranian passport to her security office, she chose to resolve a clear conflict of interest in favor of her self interests in visiting Iran, and Iranian policy requiring an Iranian passport for entry into Iran, over the policy of the United States Government requiring clearance holders to relinquish such foreign passports. It is unlikely that she would choose to resolve future conflicts in the interests of the United States given her past choices.

Applicant has no contacts with her boyfriend's family in Iran. Those contacts are casual and infrequent. But Applicant has made two trips to Iran specifically to visit her aunt. Applicant has frequent contacts with her aunt in Iran including visits and telephone calls every-other month. AG ¶ 8(c) applies partially. But it is so slight it cannot control this determination.

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

Applicant's letter of support and work performance evaluations shows she is a valued employee. However, there is a significant risk of terrorism and human rights



abuses in 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 aunt to obtain such information. Applicant has resided in the United States for over thirty-five years. She has little connection with Iran, outside her aunt and distant family members. Yet, she will not surrender her Iranian passport and she failed to express a willingness to renounce her Iranian citizenship. Further, she has exercised extremely poor judgment by expressing a preference for Iran by obtaining a new Iranian passport after becoming a U.S. citizen, and more importantly, being granted a security clearance so she could work with classified information in the employ of a defense contractor. She still maintains her Iranian passport, as of the close of the record.

Applicant did not mitigate the Foreign Preference and Foreign Influence security concerns. Overall, the record evidence leaves doubt as to Applicant's present eligibility and suitability for a security clearance. I conclude the "whole-person" concept against Applicant because of her poor judgment regarding her connections to Iran.

### **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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	Against Applicant
Subparagraph 2.c.:	Against Applicant
Subparagraph 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. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge