



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-05278
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

September 22, 2011

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant failed to overcome the foreign influence security concern that arises from her familial relationships in Iran. Clearance is denied.

On March 24, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR alleges a security concern under Guideline B (foreign influence). Applicant submitted an undated response to the SOR in which she denied the allegation contained in SOR subparagraph 1.a, admitted the allegation contained in SOR subparagraph 1.b, and requested a decision based on the record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on April 26, 2011, that was mailed to Applicant on April 29, 2011. Applicant was informed she had 30 days from receipt of the FORM to submit her objections to any information contained

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<sup>1</sup> This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

in the FORM or any additional information she wished to be considered. Applicant acknowledged receipt of the FORM on May 23, 2011, but did not submit a response to the FORM or object to anything contained in the FORM within the time allowed her. The case was assigned another administrative judge on July 12, 2011, and reassigned to me on July 25, 2011, due to caseload considerations.

### **Findings of Fact**

Applicant's admission to the allegation contained in SOR subparagraph 1.b is incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 33-year-old woman who has been employed by a government contractor, currently as a program analyst, since October 2008. As of June 2010, Applicant was single and had no dependents. However she indicated in her security clearance application and in an affidavit she submitted that she was engaged. The record does not contain any information about her fiancé.

Applicant was born in Iran and immigrated to the United States from Iran with her mother and brother in December 1998. Iran initially refused to allow her father to immigrate to the United States with his family. Applicant's father was subsequently granted permission and immigrated to the United States sometime in 1999. Applicant and her parents became naturalized United States citizens in August 2005. Applicant's brother began the process to become a naturalized United States citizen in 2009. As of June 2010, Applicant's brother was solely an Iranian citizen.

Applicant attended a community college in the United States from September 1998 until August 2001, when she was awarded an associate's degree. She attended a university in the United States from January 2002 until August 2005, when she was awarded a bachelor's degree.

Applicant's work history in the United States is as follows: July 1999 until December 2005 - part-time cashier; November 2005 until April 2006 - full-time administrative assistant/receptionist; November 2005 until December 2006 - full-time customer service representative; January 2007 until October 2008 - full-time key entry operator; October 2008 to present - full-time programmer and program analyst; August 2001 to present - part-time assistant controller.

Applicant resided with her parents in the United States from December 1998 until May 2006. She purchased her own residence in May 2006, and she has lived there since. It is unknown if she currently resides alone or not.

Applicant's father was employed by the Iranian Air Force in an accountant-type position before he immigrated to the United States. He receives a \$600 monthly pension from that job that is deposited directly into an Iranian bank account.

Applicant submitted a security clearance application in June 2009 in which she disclosed that her grandfather, four aunts, and four uncles were citizens and residents of Iran. She disclosed an additional relative who is a citizen and resident of Iran, but whose relationship to her is not listed. Applicant also listed one uncle who is a citizen of Iran but who resides in the United States. Applicant acknowledged having phone contact with each of these relatives ranging from one to two times annually to as many as three to seven times annually.

In her response to the SOR, Applicant denied the allegation that she had "several Aunts and Uncles who are citizens and residents of Iran." She wrote at that time that she only had one aunt and one uncle who resided in Iran and that her remaining aunts and uncles all were either United States or Canadian citizens and they all resided in the United States. She also clarified that while her grandfather is a citizen and resident of Iran, he also has resident alien status in the United States and is 84 years old. Applicant's grandfather visits the United States about once every six months during which Applicant visits with him. She also has telephone contact with him in Iran about four times a year.

Applicant visited Iran with her mother in June 2002. The visit lasted about one week, during which they visited and stayed with several family members in and around Tehran. They traveled to Sweden following their visit to Iran, where they visited with one of Applicant's aunts.

Applicant has possessed a United States passport since September 2005. Her Iranian passport expired in March 2007. She has retained the expired Iranian passport, hoping to be able to renew it when and if she decides to travel to Iran. She does wish to visit with her relatives in Iran at some unspecified time in the future.

Applicant professes her loyalty and allegiance to the United States. However, she also "hold(s) a place in my heart for Iran, as it is where I grew up and it is where I still have extended family members. . . ." (FORM Item 6, p. 5) Applicant disapproves of the current Iranian government because of its treatment of women and repressive policy toward its citizens. However, if Iran were to develop a more democratic style of government she would not only be willing to visit there but might possibly reside there later in her life.

U.S. Department of State publications provide the following information:

As of August 5, 2010, Iran was identified by the U.S. to be the most active state sponsor of terrorism.

Iran's financial, material, and logistic support for terrorist and militant groups throughout the Middle East and Central Asia had a direct impact on international efforts to promote peace, threatened economic stability in the Gulf and undermined the growth of democracy. (FORM Item V, p. 2)

The Department of State warns U.S. citizens to carefully consider the risks of travel to Iran. Dual national Iranian-American citizens may encounter difficulty in departing Iran. . . .

Some elements in Iran remain hostile to the United States. As a result, U.S. citizens may be subject to harassment or arrest while traveling or residing in Iran. Since 2009, Iranian authorities have prevented the departure of a number of Iranian-American citizens, including journalists and academics, who traveled to Iran for personal or professional reasons, in some case for several months. Iranian authorities also have unjustly detained or imprisoned U.S. citizens on various charges, including espionage and posing a threat to national security. U.S. citizens of Iranian origin should consider the risk of being targeted by authorities before planning travel to Iran. Iranian authorities deny the U.S. Interests Section in Tehran access to imprisoned dual nationals because Iranian authorities consider them to be solely Iranian citizens; access to U.S. citizens is often denied as well. (FORM Item XIII, p.1)

The government's poor human rights record degenerated during the year (2009). . . . The government executed numerous persons for criminal convictions as juveniles and after unfair trials. Security forces were implicated in custodial deaths and the killings of election protestors and committed other acts of politically motivated violence, including torture, beatings, and rape. The government administered severe officially sanctioned punishments, including death by stoning, amputation, and flogging. Vigilante groups with ties to the government committed acts of violence. Prison conditions remained poor. Security forces arbitrarily arrested and detained individuals, often holding them incommunicado. Authorities held political prisoners and intensified a crackdown against women's right reformers, ethnic minority rights activists, student activists, and religious minorities. . . . (FORM Item VI, p. 1)

### **Policies**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Clearance decisions must be fair and impartial decisions based upon relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B (foreign influence), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>2</sup> The Government has the burden of proving controverted facts.<sup>3</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>4</sup> although the Government is required to present substantial evidence to meet its burden of proof.<sup>5</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>6</sup> Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.<sup>7</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

No one has a right to a security clearance<sup>9</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>11</sup>

## Analysis

### Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or 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.

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<sup>2</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>3</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>4</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>5</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>6</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>7</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>8</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> *Id* at 531.

<sup>11</sup> *Egan*, Executive Order 10865, and the Directive.

Iran is a country with interests inimical to those of the United States. It actively supports terrorism and is repressive to its own citizens. Iranian authorities have unjustly detained or imprisoned United States citizens on various charges, including espionage and posing a threat to national security. Iranian authorities deny the United States Interests Section in Tehran access to imprisoned dual nationals because Iranian authorities consider them to be solely Iranian citizens; access to United States citizens is often denied as well.

Applicant's grandfather is an Iranian citizen and resident. Although he has permanent resident alien status in the United States, he continues to reside in Iran and only visits the United States about once every six months. The record does not indicate how long those visits last. Applicant visits with her grandfather when he visits the United States and has telephonic contact with him about four times a year.

Applicant has at least one aunt and one uncle who are citizens and residents of Iran. She has telephonic contact with them somewhere between one and seven times a year. Applicant visited and stayed with her Iranian relatives in Iran in June 2002. She hopes to be able to visit with them in Iran in the future. Applicant has retained possession of her expired Iranian passport to facilitate her visiting Iran in the future if she so desires.

Disqualifying Condition (DC) 7(a): *contact with a foreign family member . . . 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 applies.*

I have considered all mitigating conditions and find that none apply. Specifically, Mitigating Condition (MC) 8(a): *the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.* does not apply based on the nature and history of the Iranian Government; the close relationship between Applicant and her grandfather and more extended family as evidenced by her regular telephonic contact with them despite having herself left Iran almost 13 years ago; and her expressed desire to visit with relatives in Iran in the future.

Likewise, MC 8(b): *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person . . . 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.* does not apply based upon Applicant's continuing feelings for the country of her birth; her expressed consideration of the possibility of returning to live in Iran later in her life if the political environment changes; and her continuing contacts with her Iranian relatives, most notably her grandfather.

MC 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* obviously does not apply because Applicant maintains regular telephonic contact with her relatives in Iran and visits with her grandfather when he comes to the United States. The remaining mitigating conditions have no applicability to the facts of this case.

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶¶ 6.3.1 through ¶¶ 6.3.6 of the Directive, and the applicable disqualifying conditions, Applicant failed to mitigate the foreign influence security concern that exists in this case. She failed to overcome the case against her or satisfy her ultimate burden of persuasion. Guideline B is decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

### **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:           AGAINST APPLICANT

Subparagraphs 1.a and 1.b:       Against Applicant

### **Conclusion**

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

Henry Lazzaro  
Administrative Judge





