



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



In the matter of:)	
)	
)	ISCR Case No. 10-07319
)	
)	
Applicant for Security Clearance)	

Appearances

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

December 9, 2011

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on March 30, 2010. On March 11, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C for the Applicant. 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), effective within the Department of Defense after September 1, 2006.

The Applicant acknowledged receipt of the SOR on March 22, 2011. She answered the SOR in writing on March 29, 2011, and requested a hearing before an Administrative Judge. DOHA received the request on April 4, 2011, and I received the case assignment on June 3, 2011. DOHA issued a notice of hearing on June 6, 2011, and I convened the hearing as scheduled on June 28, 2011. The Government offered Exhibits (GXs) 1 through 4, which were received without objection. The Applicant

testified on her own behalf and submitted Exhibits (AppXs) A and B, which were received without objection. DOHA received the transcript of the hearing (TR) on July 8, 2011. The record closed on that date. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her Answer to the SOR, the Applicant admitted all of the factual allegations, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Guideline C - Foreign Preference

The Applicant was born in Iran, but came to the U.S. with her family “when . . . [she] was 15 or 16 years old.” (TR at page 19 line 20 to page 20 line 4.) She settled with her family in the Mid-West, where she attended college. (TR at page 20 line 5 to page 23 line 17.) All of her assets are in the U.S. (TR at page 35 line 5 to page 36 line 4.)

1.a. In April of 2009, which was prior to beginning her employment with her current defense contractor employer, the Applicant renewed her Iranian passport. (TR at page 26 line 16 to page 27 line 15.) Her sister, who lives in Australia, wanted to get married in the U.S., but she could not get visas for her Iranian in-laws. (TR at page 27 lines 16~24.) As a result, she was married in Iran. (*Id.*) The Applicant, who attended the wedding, had to renew her Iranian passport in order to exit the country; i.e., she could not exit Iran on an expired Iranian passport. (TR at page 24 to page 28 line 7.) She has not traveled to Iran since the 2009 wedding, and has no intention of traveling to Iran in the future. (TR at page 28 line 10~25.)

The Applicant does not now consider herself a dual citizen with Iran, and has surrendered her Iranian passport to his Facility Security Officer (FSO), as is evidenced by a letter from her FSO. (TR at page 38 line 23 to page 39 line 5, and AppX A.)

Guideline B - Foreign Influence

2.a. The Applicant has two aunts, her mother's sisters, and a cousin, one of their sons, who are citizens of and reside in Iran. (TR at page 32 line 19 to page 35 line 4.) She speaks to them "maybe once a year for New Years." (*Id.*) Furthermore, she would not compromise the U.S.'s national security if her Iranian relatives were threatened by Iranian authorities. (TR at page 38 lines 2~11.)

2.b. The Applicant has traveled to Iran three times: in 2002, in 2006, and, as above mentioned, 2009. (TR at page 23 lines 18~22, and at page 30 lines 6~17.) In 2002, she went to visit her mother's family. (TR at page 31 lines 3~8.) In 2006, she went to visit her brother, who now resides in the U.S., where he went to medical school, and is a researcher at a Mid-Western university. (TR at page 31 lines 9~24.) Finally, as stated above, she attended a wedding in 2009, and has no further intention of visiting Iran.

As the Applicant's two aunts and a cousin are Iranian; and live in Iran, I must also consider the country of Iran. Iran is possibly the most serious threat to the U.S. Iran is a state that sponsors terrorism. The U.S. has not had diplomatic relations with Iran since 1980. It is a theocratic Islamic republic in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. Iran's dismal and worsening human rights record presents a further threat to the U.S., as a large number of Iranians emigrated to the U.S. in 1979, after their Islamic revolution. These immigrants often left behind family members in Iran. Iran's security forces often target family members of political prisoners for harassment purposes.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

Analysis

Guideline C - Foreign Preference

Paragraph 9 of the adjudicative guidelines sets out the security concern relating to Foreign Preference:

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.

Subparagraph 10(a)(1) is applicable: “*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.*” Here, the Applicant, a naturalized citizen, used an Iranian passport to enter that country in 2002, in 2006 and in 2009. This is countered, however, by the mitigating conditions found under Subparagraph 11(e), the Applicant’s “*passport has been . . . surrendered to the cognizant security authority,*” her FSO. Furthermore, she does not

consider herself a dual national with Iran, and has no intention of visiting Iran in the future.

Guideline B - Foreign Influence

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

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

Here, Paragraph 7(a) is arguably applicable: “*contacts with a foreign family member . . . 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.*” The Applicant’s two aunts and a cousin are citizens of and reside in Iran, and she contacts them “maybe once a year.” This is clearly countered, however, by the first mitigating condition, as “*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.*” The Applicant has minimal contact with her Iranian relatives. Furthermore, I find the Applicant cannot be coerced by the government of Iran or any other government vis-a-vis her Iranian relatives.

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. 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.

The Administrative Judge should also 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.

The record shows that the Applicant has little contact with Iran; and as such, can not be coerced vis-a-vis any of her Iranian relatives. She understands her responsibility to the U.S., while holding a security clearance; and as such, clearly meets the eligibility criterion. Furthermore, she has the unqualified support of those who know and have worked with the Applicant (AppX B).

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her alleged Foreign Preference and Foreign Influence.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge